

# ***NORTH CAROLINA REGISTER***

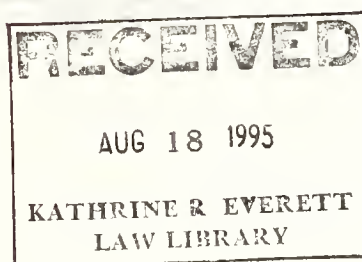
**VOLUME 10 • ISSUE 10 • Pages 823 - 888  
August 15, 1995**

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Nursing, Board of  
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## **PUBLISHED BY**

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## INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

### **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

### **ADOPTION, AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

### **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

### **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

### **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

# **NORTH CAROLINA REGISTER**



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**August 15, 1995**

This issue contains documents officially filed  
through August 1, 1995.

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# NORTH CAROLINA REGISTER

## Publication Schedule

(November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
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9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

*This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.*

\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

\*\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.



**EXECUTIVE ORDER NO. 82  
PERSIAN GULF WAR MEMORIAL COMMISSION**

WHEREAS, the purposes of the Commission established by Executive Order No. 33 have been fulfilled; and

WHEREAS, a new Commission is needed to establish memorials to the fighting men and women of North Carolina who served admirably in the Persian Gulf War;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

**Section 1. Establishment and Membership.**

There is hereby established the Persian Gulf War Memorial Commission whose membership shall consist of:

- A. Two (2) persons appointed by the Governor upon the recommendation of the Speaker of the House of Representatives;
- B. Two (2) persons appointed by the Governor upon the recommendation of the President Pro Tempore of the Senate;
- C. Five (5) persons appointed by the Governor including one representative of the N.C. Desert Storm Memorial Foundation; and
- D. One (1) representative of the Department of Cultural Resources, one (1) representative of the Division of Veterans Affairs of the Department of Administration, and one (1) representative of the State Capitol Planning Commission appointed by the Governor as non-voting ex-officio members.

The members of the Commission shall serve for the life of the Commission. From among the membership, the Governor shall appoint the Chair. The Commission shall meet at the call of the Chair. Procedures involving the existence of a quorum and the filling of vacant seats shall be governed by N.C.G.S. 143B-133. No person shall be appointed to the Commission if he or she currently holds a state-level elected office or is a member of the Governor's cabinet.

**Section 2. Purpose.**

The purpose of the Commission is to create a proposal for construction of a Persian Gulf War Memorial, including the areas of site selection, design, and funding. The Chair shall periodically advise the Governor as to the progress of the Commission.

**Section 3. Administration.**

Administrative support for the Commission shall be provided by the Department of Administration. There shall be no per diem paid to members of the Commission; however, necessary travel and subsistence allowance may be paid in accordance with state law.

**Section 4. Rescission.**

Executive Order No. 33 (Persian Gulf War Commission) dated November 10, 1993, is hereby rescinded. This is the successor organization to that Commission. All of the Commission's files, records, etc., shall be transferred to the Commission created herein.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 27th day of July, 1995.

**EXECUTIVE ORDER NO. 83  
AMENDING THE COMMISSION ON SUBSTANCE  
ABUSE TREATMENT AND PREVENTION**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

**Section 1. Establishment and Membership.**

- (a) There is hereby established a Commission on Substance Abuse Treatment and Prevention ("Commission") and an Office of Substance Abuse Policy ("Office").
- (b) The Commission shall consist of twenty persons appointed by the Governor. The Governor shall designate the Chair of the Commission. All Commission members shall serve at the pleasure of the Governor.
- (c) Members shall be citizens, government officials and representatives of nonprofit organizations who have demonstrated interest, involvement, or expertise in issues related to prevention, intervention, and treatment of alcohol and other drug abuse.
- (d) For the initial appointment period, ten of the members shall serve two-year terms and ten members shall serve four-year terms. At the expiration of these terms, subsequent member appointments shall be for four-year terms.
- (e) The Commission shall meet regularly at the call of the Chair.
- (f) The following individuals, or their designees, are requested to serve as Advisors to the Commission and its staff:
  1. The Lieutenant Governor;
  2. The Attorney General;
  3. Superintendent of Public Instruction;
  4. Deputy Secretary of the Department of Correction;
  5. Executive Director of the Governor's Crime Commission;
  6. Chief of Substance Abuse Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services in the Department of Human Resources;
  7. Director of the Division of Youth Services in the Department of Human Resources;

8. Director of the Youth Advocacy and Involvement Office in the Department of Administration;
9. Director of the Governor's Highway Safety Program in the Department of Transportation;
10. Secretary, Department of Environment, Health and Natural Resources;
11. Chair, North Carolina Women's Substance Abuse Advisory Committee;
12. Executive Director, North Carolina Commission on Indian Affairs;
13. Director, Office of State Management and Budget;
14. Director, Office of State Planning;
15. State Health Director;
16. Director of Division of Mental Health, Developmental Disabilities and Substance Abuse Services in the Department of Human Resources;
17. Secretary of Administration.

Advisors shall serve when called upon by the Chair of the Commission and/or its staff. Each designated agency is requested to take responsibility for cooperating with the Commission in carrying out the provisions of this Order. Each agency is asked to participate in all functions described for the advisors, allocating resources and personnel where needed.

## **Section 2. Functions.**

In fulfilling its responsibilities, the Commission shall have the following duties:

- (a) Engender cooperation and collaboration among agencies, public and private, involved in drug and alcohol abuse programs;
- (b) Review the North Carolina laws regarding substance abuse, including criminal and service-delivery statutes, and make recommendations concerning needed changes;
- (c) Review and recommend mechanisms for the coordination of state and local resources for addressing identified needs;
- (d) Conduct public hearings and advise the Governor and other appropriate state government departments and agency heads of the result and recommendations of the Commission;
- (e) Encourage local boards, councils, or commissions to mobilize resources to address substance abuse problems;
- (f) Encourage local boards, councils, or commissions to develop an implementation plan to meet identified needs;
- (g) Assist local boards, councils, or commissions in identifying model prevention, intervention, and treatment efforts;
- (h) Encourage program activities that increase public awareness of substance abuse and strategies to

decrease the problem; and

- (i) Other duties as assigned by the Governor and/or Secretary of the Department of Administration.

## **Section 3. Administration.**

- (a) The heads of all State departments and agencies shall, to the extent permitted by law, provide the Commission and the Office with information they require to achieve the purposes of this Order.
- (b) The Office shall hire such staff as may be necessary to help the Commission accomplish its goals, contingent upon the availability of funds.
- (c) Members of the Commission shall serve without compensation, but may receive reimbursement contingent upon the availability of funds for travel and subsistence expenses in accordance with state guidelines and procedures.
- (d) The Commission and the Office shall be funded by the Governor's discretionary funds and from agencies who have primary responsibility for involvement in program issues affecting drugs and alcohol. For administrative purposes, the Commission and the Office shall be housed in the Department of Administration. Oversight shall be with the Governor's Policy Office.

## **Section 4. Reports.**

- (a) Every department, agency, institution, and organization subject to the Executive Budget Act (Chapter 143 of the General Statutes), and a direct or indirect recipient of state or federal substance abuse funding, shall report specific program and fiscal information semi-annually to the Office, in a report format approved by that office and the Office of State Budget and Management.
- (b) These reports shall, at least, include a report of all revenues and expenditures for the period. In addition, each report shall contain expenditure activity against explicit substance abuse program performance measures determined by the department, agency, institution, or organization consistent with nomenclature and procedures for performance-based budgeting established by the Office of State Budget and Management.
- (c) The Commission and the Office shall report their findings and recommendations to the Governor.

## **Section 5. Rescission.**

Executive Order 46 is hereby rescinded.

This Order is effective immediately.

Done in Raleigh, North Carolina, this the 3rd day of August, 1995.

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:GS:NT:jdp  
DJ 166-012-3  
95-1536

July 21, 1995

Kenneth R. Hoyle, Sr., Esq.  
Lee County Attorney  
P.O. Box 1968  
Sanford, North Carolina 27331-1968

Dear Mr. Hoyle:

This refers to the relocation of the Board of Elections of Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 23, 1995.

The Attorney General does not interpose any objection to the specified change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

By:

Elizabeth Johnson  
Acting Chief, Voting Section



**TITLE 10 - DEPARTMENT OF  
HUMAN RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 261 .0101 - .0103, .0106 - .0107; and repeal rules cited as 10 NCAC 261 .0104 - .0105.

**Proposed Effective Date:** November 1, 1995.

**A Public Hearing** will be conducted at 1:30 p.m. on September 7, 1995 at the NC Division of Medical Assistance, 1985 Umstead Drive, Kirby Building, Room 132, Raleigh, NC.

**Reason for Proposed Action:** To clarify appeals procedures for recipient/applicant appeal and attending physician review procedures for denial, suspension, termination, or reduction of prior approval requests or denial of other medical services.

**Comment Procedures:** Written comments concerning this rule-making action must be submitted by September 14, 1995, to Portia Rochelle, APA Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing. A fiscal note statement is available upon written request from the same address.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of local government or state funds.

**CHAPTER 26 - MEDICAL ASSISTANCE**

**SUBCHAPTER 261 - RECIPIENT/APPLICANT  
APPEAL REVIEW PROCEDURES FOR DENIAL,  
SUSPENSION, TERMINATION, OR REDUCTION  
OF PRIOR APPROVAL REQUESTS OR DENIAL OF  
OTHER MEDICAL SERVICES**

**SECTION .0100 - APPEALS PROCEDURES**

**.0101 PURPOSE AND SCOPE**

~~—(a) The purpose of these Rules is to specify the policies and procedures to provide for attending physician requests for reconsideration and recipient requests for appeal of decisions changing a recipient's or a Medicaid applicant's level of care, denial or modification of prior approval requests or denial of other medical services.~~

~~—(b) These Rules apply to decisions made by the attending physician, a Utilization Review Committee (URC) a Medical Review Independent Professional Review Team (MR/IPR) or a Prior Approval Unit (PAU) acting as agents of the state agency.~~

~~—(c) Whenever the attending physician, the URC, the MR/IPR or the PAU orders a change in the level of care or~~

~~denies or modifies a service or a prior approval request, such body shall first verbally or in writing notify, as soon as possible but at least within 48 hours of the decision, the recipients attending physician (AP) of the decision. If the AP disagrees with the decision, he may request informal appeal as specified in 10 NCAC 261 .0103.~~

~~—(d) The decision making body shall, within 48 hours, notify the recipient in writing of the decision and of the following:~~

- ~~—(1) the effective date of the decision denying or modifying service;~~
- ~~—(2) the date Medicaid payment will cease, if applicable;~~
- ~~—(3) the opportunity for formal appeal of this decision and procedures for requesting such an appeal;~~
- ~~—(4) the fact that, if appealed, payment for the currently certified level of care will continue for an on-going Medicaid patient pending appeal; and~~
- ~~—(5) that the attending physician has been notified of this decision.~~

(a) The purpose of these Rules is to specify the policies and procedures to provide for recipient/applicant or his/her representative requests for an informal appeal of decisions changing a Medicaid recipient/applicant's level of care, denial, termination, suspension, or reduction of prior approval requests or denial of other medical services. These policies and procedures do not apply to provider requests for Reconsideration Review of DMA provider post payment review decisions set out in 10 NCAC 26G.

(b) These Rules apply to decisions made by the Division of Medical Assistance "(DMA)", a Medical Review Independent Professional Review Team "(MR/IPR)", a Prior Approval Unit "(PAU)", or other State Agencies acting as agents of this State agency.

(c) The decision making body as set out in Paragraph (b) of this Rule shall, within two working days, notify the recipient in writing of the decision and the following:

- (1) the effective date of the decision denying, terminating, reducing, or suspending a service;
- (2) the reasons for the agency decision;
- (3) the specific regulations that support, or the change in Federal or State law that requires the decision;
- (4) the date Medicaid payment will cease, if applicable; at least 11 days after the date of the notification letter;
- (5) the opportunity for informal appeal of this decision and procedures for requesting such an appeal; and
- (6) the fact that, if appealed, payment for the currently certified level of care or approved service will continue for an eligible Medicaid recipient pending appeal.

Authority G.S. 108A-25(b); 42 C.F.R. 431; 42 C.F.R. 456.



## **.0102 REQUESTS FOR FORMAL AND INFORMAL APPEALS**

~~—(a) There are two types of reconsiderations that may be utilized when either the attending physician or recipient or his legal representative is dissatisfied with a decision concerning level of care or modification of service or prior approval. These types are informal and formal reconsiderations.~~

~~—(b) An informal reconsideration is a review of the level of care of the recipient.~~

~~—(c) A formal reconsideration is a contested case hearing conducted by the Office of Administrative Hearings.~~

There are two levels of appeals that may be utilized when the recipient/applicant or his/her representative is dissatisfied with a decision concerning level of care denial, suspension, reduction, or termination of service, or prior approval. These levels are informal and formal appeals.

(1) Informal. The recipient/applicant or his/her representative may request an Informal Reconsideration Review by the Division of Medical Assistance (DMA) Hearing Unit.

(2) Formal. Formal appeals are conducted by the Office of Administrative Hearings (OAH) under G.S. 150B, and the rules promulgated by the Office of Administrative Hearings.

Authority G.S. 108A-25(b); 150B-Article 3; 42 C.F.R. 431; 42 C.F.R. 456.

## **.0103 TIME LIMITS ON REQUESTS FOR RECIPIENT/APPLICANT RECONSIDERATION REVIEWS**

~~—(a) There is one opportunity for informal appeal, which consists of reconsideration by the body which initially made the disputed decision.~~

~~—(b) Attending Physician (AP) Requests for Reconsideration~~

~~—(1) If the AP disagrees with a URC decision and desires reconsideration, he must request reconsideration from the URC Chairman. His request must be received by the URC within five working days of receipt of notification of the decision. If the request for reconsideration is not received by the URC within the five day period, it shall be considered a waiver of the physician's opportunity for reconsideration.~~

~~—(2) If the AP disagrees with a MR/IPR or PAU decision and desires reconsideration, he must request reconsideration from the body which made the decision. His initial request for reconsideration must be received by the appropriate body within five days of the date of notification of this decision.~~

The recipient/applicant or his/her representative may appeal a decision made by DMA, MR/IPR, PAU, or other State agency. The request for an informal appeal must be made in writing and received by the DMA Hearing Unit by

mail, facsimile, or hand delivery within 11 days from the date on the notification letter of suspension, reduction, termination, or denial of service. If the eleventh day falls on a Saturday, Sunday or legal holiday, then the period during which an informal appeal may be requested shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

Authority G.S. 108A-25(b); 42 C.F.R. 456.

## **.0104 FORMAL APPEALS**

~~—(a) Formal appeals may be made only by the recipient or his legal representative. The attending physician may participate in the formal appeals process with the concurrence of the recipient.~~

~~—(b) A request for a formal appeal as a contested case hearing must be in writing and received by the Office of Administrative Hearings within 60 days of receipt of this letter of notification of level of care change.~~

~~—(c) The attending physician may waive the informal reconsideration process to participate in the formal process with the recipient with the concurrence of the recipient.~~

Authority G.S. 108A-25(b); 42 C.F.R. 431.

## **.0105 PROCEDURES FOR FORMAL APPEALS**

~~—Formal appeals are conducted by the Office of Administrative Hearings pursuant to N.C.G.S. 150B.~~

Authority G.S. 108A-25(b); 42 C.F.R. 431.

## **.0106 PAYMENT PENDING APPEALS**

~~—(a) If no formal appeal is requested, Medicaid payments shall continue for the existing level of care until the required change date stated in the notification or until the recipient moves from that level of care, whichever occurs first.~~

~~—(b) If a formal appeal is requested in accordance with Rule .0104 of this Subchapter, Medicaid payment for the existing level of care shall continue until the formal appeal process is completed.~~

~~—(c) If the change in level of care decision is upheld, the Division may recover Medicaid payments from the required change date specified in the initial notification until the date the appeal is completed.~~

(a) If no informal appeal is requested, payment shall continue for the existing level of care or approved service(s) rendered until the required change (action) date stated in the notification or until the recipient moves from that level of care or discontinues approved service(s), whichever comes first.

(b) If an informal appeal is requested in accordance with Rule .0103 of this Section, Medicaid payment for that level of care or approved service(s) shall continue until the informal appeal process is completed.

(c) If a formal appeal is requested in accordance with Rule .0102(b) of this Section, Medicaid payment for that level of care or approved service(s) shall continue until the

formal appeal process is completed.

(d) If the formal appeal decision upholds the original decision by DMA, MR/IPR, PAU, or other State Agency, DMA may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished resulting from the formal appeal process.

Authority G.S. 108A-25(b); 42 C.F.R. 431.

#### .0107 DISMISSAL OF APPEAL

~~(a) If, at any time during the reconsideration or appeal process, the recipient's medical condition worsens and the patient is properly recertified to the existing or a higher level of care, the reconsideration or appeal shall be concluded in favor of the recipient.~~

~~(b) If, through the informal appeal process, a decision satisfactory to a recipient formally appealing is reached prior to completion of the formal appeal, the formal appeal shall then be concluded in favor of the recipient.~~

~~(c) All decisions reached through the formal appeals process are administratively final and negate any opposing decision reached through the informal reconsideration process.~~

(a) Scheduled Reconsideration Reviews may be dismissed if applicant/recipient or his/her representative withdraws the request in writing.

(b) If applicant/recipient or his/her representative fails to appear at a scheduled Reconsideration Review without good cause, the review will still be held.

(c) If, at any time during the reconsideration or appeal process, the recipient's medical condition worsens and the patient is properly re-certified or approved for the existing or a higher level of care or service, the reconsideration or appeal shall be concluded in favor of the recipient.

Authority G.S. 108A-25(b); 42 C.F.R. 431.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 42W .0001 - .0002.

Proposed Effective Date: November 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on September 6, 1995 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: During the 1995 Session of the General Assembly, changes were made in the laws governing client eligibility for the State Abortion Fund. As a result, corresponding changes must be made in 10 NCAC 42W .0001 Nature and Scope and 10 NCAC 42W .0002 Eligibility.

Comment Procedures: Comments may be presented

anytime before or at the public hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Sharnese Ransome, Special Assistant, NC Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, (919) 733-3055.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

## CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

### SUBCHAPTER 42W - STATE ABORTION FUND

#### .0001 NATURE AND SCOPE

(a) The State Abortion Fund is a financial resource for abortion procedures for North Carolina residents who need the procedure and who meet the eligibility criteria as established in Chapter 321, Section 259.1 of the 1993 Session Laws by the General Assembly and the criteria in 10 NCAC 35E.0106 for Health Support Services including all subsequent amendments and editions. A copy of this rule may be obtained from the office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule.

(b) The State Abortion Fund is administered by the Division of Social Services.

(c) Only abortions performed in accordance with applicable state laws are reimbursable under the State Abortion Fund.

Statutory Authority G.S. 14-45.1; 143B-153; 1995 S.L., c. 507, s. 23.8A.

#### .0002 ELIGIBILITY

(a) State Abortion Funds are administered uniformly in every political subdivision of the state. Applications are made to county departments of social services. A county other than the client's county of residence may authorize State Abortion Funds for individuals who do not want to apply for services in their own counties for reasons of confidentiality.

(b) Applicants must be residents of North Carolina and meet the eligibility criteria as established by the General Assembly in Chapter 321, Section 259.1a of the 1993 Session Laws and the criteria in 10 NCAC 35E.0106 for Health Support Services including all subsequent amendments and editions. When the gestation period is over 20 weeks prior approval for the procedure must be obtained from the Division of Social Services. A copy of this rule may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents



(\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule.

Statutory Authority G.S. 14-45.1; 143B-153; 1995 S.L., c. 507, s. 23.8A.

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 4A .0004.

**Proposed Effective Date:** December 1, 1995.

**Instructions on How to Demand a Public Hearing** (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.

**Reason for Proposed Action:** The amendments reflect a Division of Highways job title change and grammatical corrections.

**Comment Procedures:** Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government or state funds.

## CHAPTER 4 - SECRETARY OF TRANSPORTATION

### SUBCHAPTER 4A - DUTIES AND RESPONSIBILITIES

#### .0004 HIGHWAY TRAFFIC ORDINANCE AUTHORITY

(a) The Secretary of Transportation is delegated the authority by the Board of Transportation to adopt all necessary rules for the use of and to police traffic on state highways.

(b) The ~~Manager of Traffic Engineering State Traffic Engineer~~ is subdelegated the authority by the Secretary of Transportation to adopt all necessary rules for the use of and to police traffic on state highways, ~~other than setting, changing or extending and to set, change or extend~~ route numbers on the Primary highway system of North Carolina.

Statutory Authority G.S. 143B-350(f),(g).

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

### CHAPTER 2 - BOARD OF ARCHITECTURE

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Architecture intends to amend rules cited as 21 NCAC 2 .0301 - .0302.

**Proposed Effective Date:** July 1, 1996.

**A Public Hearing** will be conducted at 10:00 a.m. on September 20, 1995 at the Professional Building, 127 W. Hargett St., Suite 304, Raleigh, NC 27601.

#### Reason for Proposed Action:

21 NCAC 2 .0301 - Sets out current application procedures and deadlines for the national computerized examination.

21 NCAC 2 .0302 - Provides for administration of the national examination by computer and establishes the length of time the passing grades for each division are valid.

**Comment Procedures:** Any person interested in these rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than Wednesday, September 20, 1995. Anyone planning to attend the hearing should notify the Board office by noon Friday, September 15, 1995 whether they wish to speak on the proposals. Speakers will be limited to 5 minutes.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of local government or state funds.

## SECTION .0300 - EXAMINATION PROCEDURES

### .0301 APPLICATION FOR EXAMINATION OR REGISTRATION

(a) All persons desiring to submit applications for written examination must complete an application and submit the application fee. All new applications and supporting documents for the Architectural Registration Examination (ARE) must be on file in the office of the Board not later than ~~March 1st of each year for the June examination and October 1st of each year for the December examination~~ two months prior to the date of initial examination in order for the applicant's eligibility to be determined and in order that the ~~candidate~~ applicant may receive proper instructions to prepare for the examination. ~~Applications and any supporting documents submitted after midnight of March 1st or October 1st of each year shall be deemed by the Board to be incomplete and the candidate shall not be eligible to sit for the next administration of the examination.~~ If an application is in proper form and the applicant is otherwise qualified by



statute and the rules of the Board to sit for the examination, notice will be mailed to the applicant, with detailed information as to the time, place and other requirements of the examination.

(b) The fees for examination, or parts thereof, will be established by the Board in order that all costs for examination materials are recovered. Fees will be published in a separate schedule and will be made available to all applicants for examination. A non-refundable application fee as established in Rule .0108 of this Chapter must be submitted with each first-time application in addition to the examination fee.

*Statutory Authority G.S. 83A-4; 83A-6; 83A-7.*

### .0302 WRITTEN EXAMINATION

(a) Licensure Examination. All applicants for architectural registration in North Carolina by ~~written~~ examination must pass the Architectural Registration Examination (ARE), administered ~~in North Carolina~~, prepared by the National Council of Architectural Registration Boards (NCARB). Provided, applicants who have never been registered in any state or territory may transfer credits for portions of the examination previously passed in another state if at the time of taking the exam elsewhere they otherwise qualified for taking the exam ~~in North Carolina~~ under the rules in this Chapter.

- (1) Description. The nature of the examination is to place the candidate in areas relating to actual architectural situations whereby his abilities to exercise competent value judgements will be tested and evaluated.
- (2) Qualifications. The prequalifications necessary for an applicant's admission to the Architectural Registration examination (ARE) are as follows:
  - (A) be of good moral character as defined in North Carolina General Statute 83A-1(5);
  - (B) be at least 18 years of age;
  - (C) hold a degree in architecture from a college or university where the degree program has been approved by the Board, or professional education equivalents as outlined and defined in the North Carolina Board of Architecture's Table of Equivalents for Education and Experience, Appendix A. Beginning July 1, 1991, the professional education qualification shall be a NAAB (National Architectural Accrediting Board) accredited professional degree in architecture; provided that an applicant whose education equivalents otherwise qualified under the Board's rules in effect prior to 1989 may apply for admission to the Architectural Registration Examination. However, an applicant who does not hold a NAAB accredited professional degree may not accumulate more than three and one half years of education credits in the aggregate from all degree programs in

which he was enrolled. Further provided, the applicant must file with the Board by December 31, 1991, a notice of intent to sit for the examination on or before June 30, 1995;

- (D) if an applicant failed to send the notice of intent under Part (a)(2)(C) of this Rule and does not have the five-year professional degree in architecture from an NAAB accredited institution, the Board in its discretion, may admit the applicant to sit for the ARE for the first time no later than the June 1996 exam only upon each of the following conditions:
  - (i) the applicant received a four-year degree in architecture from an NAAB accredited institution prior to 1989; and
  - (ii) the applicant's education equivalents otherwise qualified under the Board's rules in effect prior to 1989; and
  - (iii) the applicant completely qualified and applies for the exam no later than March 1, 1996; and
  - (iv) the applicant has demonstrated a continuing intention to seek licensure in North Carolina by either:
    - (I) completing the four-year degree in architecture in North Carolina; or
    - (II) obtaining the practical training or experience required by Part (a)(2)(E) of this Rule in North Carolina; and
- (E) have three years' practical training or experience in the offices of registered architects or its equivalent as outlined and defined in the North Carolina Board of Architecture's Table of Equivalents for Education and Experience, Appendix A. All applicants who apply for architectural registration subsequent to July 1, 1987 shall be required to follow the Intern Development Program (IDP) through the National Council of Architectural Registration Boards or an equivalent program approved by the North Carolina Board of Architecture in order to satisfy the requirements of this Section. In the case of any applicant certifying to the Board that he or she had accrued sufficient training credits under the requirements of the current Appendix A prior to July 1, 1987, so that 12 or fewer months of training remained to be acquired, then the current Appendix A shall continue in effect for such applicant.
- (b) Retention of Credit. Transfer credits for parts of the examination passed prior to the 1983 Architectural Registration Examination (ARE), shall be as established by the Board. Information as to transfer credits will be provided, when appropriate, to candidates as an inclusion with the application forms.
- (c) Practical Training. Practical training means practical experience and diversified training as defined in the North

Carolina Board of Architecture's Table of Equivalents for Education and Experience, Appendix A. However, the Board reserves the right to judge each case on its own merits.

(d) Personal Audience. The candidate may be required to appear personally before the examining board or a designated representative of the Board and afford the Board an opportunity to judge his natural endowments for the practice of architecture, his ethical standards, and by questions gain further knowledge of his fitness for the practice of architecture. The time for this audience will be set by the examining body.

(e) Grading. The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB.

(1) ~~To achieve a passing grade on the ARE, An applicant must receive a passing grade of 75 in each division. Grades from the individual divisions may not be averaged. Applicants will have unlimited opportunities to retake divisions which they fail, but all divisions, previously failed, must be retaken at one time at a subsequent examination. A passing grade for any division on any examination taken after July 1, 1996, shall be valid only for five years.~~

(2) ~~In order to insure fairness in grading and to preserve anonymity until after the examinations have been graded, Each candidate will receive shall be assigned a number by the Board that will be unique for each candidate. This number shall be placed by the candidate on all papers and exhibits. together with photo identification, shall be required for admittance to the examination.~~

~~(f) Time and place. Beginning in 1983, the Board will administer the ARE over a four day period to all applicants eligible, in accordance with the requirements of this Rule. The place and exact dates will be announced in advance of the examination.~~

Statutory Authority G.S. 83A-1; 83A-6; 83A-7.

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## CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to adopt rules cited as 21 NCAC 32B .0901 - .0902; and amend rule cited as 21 NCAC 32F .0003.

Proposed Effective Date: November 1, 1995.

A Public Hearing will be conducted at 1:00 p.m. on September 14, 1995 at the North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609.

**Reason for Proposed Action:** To define licensure for those who volunteer for no profit.

**Comment Procedures:** Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before September 14, 1995 to the following address: Administrative Procedures, Medical Board, PO Box 20007, Raleigh, NC 27619.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of local government or state funds.

## SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

### SECTION .0900 - SPECIAL VOLUNTEER LICENSE

#### .0901 DEFINITION OF PRACTICE

The Special Volunteer License limits its holder to the practice of Medicine as follows:

- (1) practice within the confines of specific locations approved by the Board; and
- (2) practice with no expectation of payment or compensation whatsoever for any medical services rendered, or any compensation or payment to the Special Volunteer Licensee either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services.

Statutory Authority G.S. 90-13.

#### .0902 QUALIFICATION FOR LICENSURE

(a) The applicant shall meet all requirements for licensure pursuant to 21 NCAC 32B .0200 or 21 NCAC 32B .0300 except that in lieu of the fee of two hundred fifty dollars (\$250.00) required at 21 NCAC 32B .0308, that licensure fee shall be one hundred dollars (\$100.00).

(b) The holder of a currently registered license to practice medicine issued pursuant to 21 NCAC 32B .0200 or 21 NCAC 32B .0300 upon Board completion of an application provided by the Board and payment of a fifty dollar (\$50.00) fee may obtain a Special Volunteer License to replace the previously issued license.

Statutory Authority G.S. 90-13; 90-15.

## SUBCHAPTER 32F - BIENNIAL REGISTRATION

#### .0003 FEE

Each physician shall pay a biennial registration fee of two hundred dollars (\$200.00) to the Board every odd numbered year in accordance with G.S. 90-15.1; except, each physician holding a resident's training license shall pay a biennial registration fee of twenty-five dollars ~~(\$25.00)- (\$25.00),~~ and every physician who holds a special volunteer license



shall pay a biennial registration fee of ten dollars (\$10.00).

Statutory Authority G.S. 90-18(13); 90-18.1.

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## CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend rules cited as 21 NCAC 32M .0001 - .0012.

Proposed Effective Date: November 1, 1995.

A Public Hearing will be conducted at 1:00 p.m. on September 13, 1995 at the North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action: To clarify actual procedures followed and to decrease procedural steps followed in the approval process.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before September 13, 1995 to the following address: North Carolina Medical Board, Administrative Procedures, PO Box 20007, Raleigh, NC 27619.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

### SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

#### .0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Medical Board" means the Board of North Carolina Medical Board. Examiners of the State of North Carolina, to whom responsibility is given by G.S. 90-6 to approve individuals in accordance with these Rules and to secure compliance with these Rules.
- (2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
- (3) (2) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board of Medical Examiners to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) (3) "Nurse Practitioners or NP" means a currently licensed registered nurse approved with additional education to perform medical acts who

functions at the direction of or under the supervision of a licensed physician for those medical acts. physician licensed by the Board and who perform medical acts traditionally performed by the physician such as diagnosis and treatment. In accordance with G.S. 90-18.2, only Only individuals a registered nurse approved by the Medical Board of Medical Examiners and the Board of Nursing under these Rules may legally identify themselves oneself as a Nurse Practitioners Practitioner. It is understood that the nurse practitioner, by virtue of RN licensure, is independently accountable for those nursing acts which he or she may perform.

- (5) (4) "Nurse Practitioner Applicant" means a registered nurse the individual upon whose behalf an application for approval is submitted who may function before prior to full approval as a Nurse Practitioner in accordance with Rule .0003(c) of this Subchapter in the same manner as a student under strict supervision as outlined in Rule .0002 of this Subchapter.

- (6) (5) "Supervision" means the physician's function of overseeing patient case management relevant to medical acts performed by the nurse practitioner. NP as outlined in Rule .0009 of this Subchapter.

- (7) (6) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, is held accountable for the on-going supervision and evaluation of the medical acts performed by the nurse practitioner as defined in the site specific written protocols. The primary supervising physician shall assume the responsibility of assuring the Boards that the nurse practitioner is qualified to perform those medical acts described in the site specific written protocols. means the physician who, by signing the application for approval, accepts full medical administrative responsibility for the NP's activities at all times whether he personally is providing supervision or supervision is being provided by a Back up Supervising Physician. The Primary Supervising Physician shall assume total responsibility for the NP's performance in the particular field or fields in which the NP is expected to perform medical acts.

- (8) (7) "Back-up Supervising Physician" means the licensed physician who, by signing the nurse practitioner application for approval, accepts responsibility to be available to is held accountable for supervising supervise the NP's performance of medical acts activities in the absence of by the nurse practitioner in accordance with the site specific written protocols when the Primary Supervising Physician is not available. only in the practice sites listed in the approval application. The Back up Supervising Physician is responsible for the medical activities of the NP only when he



is providing supervision.

- (8) ~~"Formulary" means the document which lists the generic categories of drugs to be prescribed, ordered, or dispensed by physician extenders under written standing orders from the supervising physician for patient care in approved practice sites.~~
- (9) ~~"Approved practice sites" means only those practice sites specifically listed in the approved application on file in the Board's office in which the NP may legally perform medical acts.~~
- (9) "Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Subchapter.
- (10) "Written standing protocols" means the signed and dated set of written practice guidelines maintained at each practice site which describe the prescribing privileges, treatments, tests and procedures that define the scope of the nurse practitioner's medical acts in that setting.

Statutory Authority G.S. 90-18(14); 90-18.2; 90-171.23(b).

#### .0002 SCOPE OF PRACTICE

~~The Nurse Practitioner Applicant status may be used only by an individual whose application for approval as a Nurse Practitioner has been received in the Nursing Board's office. The Nurse Practitioner Applicant status may not be used to "try out" a job or work temporarily in a job in which the individual does not intend to obtain approval. In the event the individual leaves the job in which he has worked as a Nurse Practitioner Applicant before approval is granted, the individual must submit a written explanation to the Board before he may work in the Nurse Practitioner Applicant status in another job.~~

- (1) ~~The Nurse Practitioner Applicant status applies to:~~
  - (a) ~~an individual newly graduated from an approved NP educational program; or~~
  - (b) ~~an individual coming to North Carolina for the first time who has worked previously as an NP in another state.~~
- (2) ~~A Nurse Practitioner Applicant described in Subparagraph (1) of this rule may function before approval in accordance with this Subchapter under supervision with the following limitations:~~
  - (a) ~~wear identification as a "Nurse Practitioner Applicant";~~
  - (b) ~~have no prescribing privileges;~~
  - (c) ~~have immediate physician countersigning of all medical notations in all patient charts in all practice locations;~~
  - (d) ~~have no remote practice sites. (The supervising physician must always be physically present in the practice site in which the applicant is working.)~~
- (3) ~~The Nurse Practitioner Applicant status does not~~

~~apply to an individual previously approved as an NP in North Carolina in another practice situation which has terminated who is seeking approval in a new job. The previously approved NP may function prior to approval of the new job as follows:~~

- (a) ~~wear identification as a "Nurse Practitioner";~~
- (b) ~~use prescribing number previously issued by the Board for prescribing privileges;~~
- (c) ~~have physician countersigning of all medical notations in all patient charts in all practice locations within 24 hours of NP patient contact.~~

The nurse practitioner is responsible and accountable for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner is educationally prepared and for which competency has been maintained, with physician supervision as described in 21 NCAC 32M .0010. These services include but are not restricted to:

- (1) promotion and maintenance of health;
- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

Statutory Authority G.S. 90-18.2; 90-171.42.

#### .0003 NURSE PRACTITIONER APPROVAL

(a) Qualifications for nurse practitioner approval. A registered nurse must be approved by the Medical Board and the Nursing Board before the individual may practice as a nurse practitioner. In order to be considered for approval as a Nurse Practitioner, an applicant must: The Boards may grant approval to practice as a nurse practitioner to an individual who:

- (1) is currently licensed as a registered nurse by the North Carolina Board of Nursing;
- (2) provide evidence of successful completion of a course of formal education and instruction in the procedures and practices of the NP will be expected to perform, as set forth in Rule .0005 of this Subchapter. has successfully completed an approved educational program as outlined in Rule .0004 of this Subchapter;
- (3) has an unrestricted license to practice as a registered nurse and, if applicable, an unrestricted approval to practice as a nurse practitioner unless the Boards consider such condition and agree to approval;
- (4) submits any information deemed necessary to

- evaluate the application;  
 (5) has a primary supervising physician agreement;  
and  
 (6) pays the appropriate fee.

~~—(b) Initial approval may be denied for any of the reasons set forth in Rule .0007 of this Subchapter, as well as failure to satisfy the Joint subcommittee of the qualifications of the NP educational program from which the applicant graduated as set forth in Rule .0005 of this Subchapter.~~

~~.0004 (b) Application for NP nurse practitioner approval.~~

- (1) (a) Application for nurse practitioner approval of an NP must be made upon the appropriate forms and must be submitted jointly by the NP nurse practitioner and primary supervising physician(s), physicians with whom the NP will work.

- (2) (b) ~~Applicants complete in every detail and every supporting document required, must Applications for first-time approval in North Carolina shall be submitted to either the office of the Nursing Board and then processed by both Boards as follows: of Nursing or the Board of Medical Examiners as indicated in the application instructions. In order that the application may be considered in a timely fashion, applications must be submitted by the deadlines stated in the application instructions.~~

- (A) the Nursing Board will verify compliance with Subparagraphs (a)(1) - (4) of this Rule;  
 (B) the Medical Board will verify compliance with Subparagraphs (a)(4) - (6) of this Rule; and  
 (C) the appropriate Board will notify applicant of final approval status.

~~—(c) Applications for approval of new NP jobs are considered by the Joint Subcommittee which makes its recommendations to the Board of Medical Examiners for final disposition of the application.~~

~~—(d) If for any reason an NP discontinues working under the supervision of the Primary Supervising Physician under which the NP is approved, the Board shall be notified and the NP's approval shall automatically terminate until such time as a new application is approved in accordance with this Subchapter.~~

~~—(e) Applications for approval of changes in the NP practice may be administratively approved by the appropriate Board staff and reported to the Board of Medical Examiners at each meeting.~~

~~—(1) The following applications shall be considered for administrative approval by staff of both Boards:~~

- ~~—(A) routine job changes of NP previously approved in N.C., and~~  
~~—(B) additional job under a new primary supervising physician.~~

~~—(2) The following applications shall be considered for administrative approval by the staff of the Board of Medical Examiners:~~

- ~~—(A) change of primary supervising physician when that is the only change taking place in a currently approved NP practice site;~~  
~~—(B) addition of back up supervising physicians to a currently approved NP practice site;~~  
~~—(C) addition of practice sites under the supervision of the currently approved primary supervising physician;~~  
~~—(D) change of countersigning time in a currently approved NP practice site;~~  
~~—(E) temporary approval for second site on relief basis not to exceed four months.~~

~~—(f) Administrative approval is not automatic for the applications listed in this Rule. The changes may be administratively approved at the discretion of the Boards' staffs. The changes which cannot be processed automatically but must be considered by the Board include the following: if any of the background questions are answered "yes" by the NP or primary supervising physician, or if the NP or any other supervising physicians listed have an investigative complaint or public file.~~

(3) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (A) addition or change of primary supervising physician shall be submitted to the Medical Board;  
 (B) requests for change(s) in scope of practice shall be submitted to the Nursing Board;  
 (C) the appropriate Board will notify applicant of final approval status.

(4) Interim status for nurse practitioner applicant may be granted as follows:

- (A) a registered nurse who is a new graduate of an approved nurse practitioner educational program as set forth in Rule .0004 of this Subchapter; or  
 (B) a registered nurse seeking first time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner educational requirements as set forth in Rule .0004 of this Subchapter; and

(C) the Nursing Board has issued interim approval with the following limitations:

- (i) no prescribing privileges;  
 (ii) physician on-site for appropriate ongoing supervision, review and countersigning of notations of medical acts in all patient charts within 24 hours of nurse practitioner applicant-patient contact; and  
 (iii) may not exceed a period of six months.

(5) The registered nurse who was previously approved to practice as a nurse practitioner in this state shall:

- (A) meet the nurse practitioner approval require-



ments as stipulated in Subparagraphs (a)(1), (a)(3) - (a)(6);

- (B) complete the appropriate application; and
- (C) receive notification of approval from the appropriate Board.

- (6) If for any reason a nurse practitioner discontinues working in the approved supervising physician(s) arrangement, the Boards shall be notified in writing and the nurse practitioner's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

Statutory Authority G.S. 90-18(13),(14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42.

#### **.0004 .0005 REQUIREMENTS FOR APPROVAL OF NURSE PRACTITIONER EDUCATIONAL PROGRAMS**

(a) The Joint Subcommittee shall establish the requirements for approval of nurse practitioner educational programs.

(b) ~~An NP~~ A nurse practitioner applicant must provide to the Board of Nursing evidence of successful completion of a course of formal education and instruction which contains a core curriculum including ~~four months~~ 400 contact hours of didactic education and ~~four months~~ 400 contact hours of preceptorship or supervised clinical experience.

- (1) The core curriculum shall contain as a minimum the following components:

- (A) ~~(a) data collection health assessment and diagnostic reasoning including:~~

- (i) historical data;
- (ii) physical examination data;
- (iii) organization of data base;

- (B) ~~(b) pharmacology;~~
- (C) ~~(c) common illnesses; pathophysiology;~~

- (i) ~~pathophysiology;~~
- (ii) ~~differential diagnosis for the purpose of consultation, referral, or management of:~~

- (D) clinical management of common health care problems and diseases related to:

- (A) ~~common diseases of the head and neck~~

- (i) ~~(B) common respiratory system and pulmonary diseases;~~

- (ii) ~~(C) common cardiovascular system problems;~~

- (iii) ~~(D) common GI problems gastrointestinal system;~~

- (iv) ~~(E) common GU and GYN problems genitourinary system;~~

- (F) ~~common infectious diseases;~~

- (G) ~~common emergencies;~~

- (H) ~~common neurologic psychiatric problems;~~

- (v) ~~(F) common skin problems integumentary system;~~

- (vi) ~~(J) common hematological problems hematologic and immune systems;~~

- (vii) ~~(K) common endocrine system problems;~~

- (viii) ~~(L) common musculoskeletal system problems;~~

- (ix) infectious diseases;

- (x) nervous system;

- (xi) behavioral, mental health and substance abuse problems;

- (E) ~~(d) clinical preventive services including health promotion and prevention of disease;~~

- (F) ~~(e) teaching and counseling client education related to Parts (b)(1)(D) and (E) of this Rule; and~~

- (G) ~~(f) role realignment and trends development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.~~

- (2) Nurse practitioner applicants who may be exempt from the components of the core curriculum requirements listed in Subparagraph (b)(1) of this Rule are:

- (A) ~~(a)~~ Any nurse practitioner approved in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.

- (B) ~~(b)~~ Any A nurse practitioner certified by a national organization credentialing body approved by the Joint Subcommittee Nursing Board who also provides evidence satisfying Parts (b)(1)(A) - (C) of this Rule shall be exempt from the core curriculum requirement requirements in Parts (b)(1)(D) - (G) of this Rule. Evidence of satisfying Parts (b)(1)(A) - (C) of this Rule shall include, but may not be limited to:

- (i) a narrative of course content; and

- (ii) contact hours.

- (C) ~~(c)~~ An A nurse practitioner applicant whose formal education does not meet all of the stipulations in Paragraph (b) of this Rule may request consideration by the Joint Subcommittee may appeal to the Board of Nursing on the basis of other education and experience.

Statutory Authority G.S. 90-18(14); 90-171.42.

#### **.0005 ANNUAL RENEWAL**

(a) Each registered nurse who is approved as a nurse practitioner in this state will, upon notification from the Medical Board, annually renew said approval by:

- (1) Verifying current RN licensure;

- (2) Submitting the fee required in Rule .0012 of this Subchapter;

- (3) Completing the renewal form; and

- (4) Providing documentation of the required number of hours of Continuing Education as stipulated in



Rule .0006 of this Subchapter.

(b) If the nurse practitioner has not renewed within 30 days of renewal date, set by the Medical Board, the approval to practice as a nurse practitioner will lapse.

Statutory Authority G.S. 90-6; 90-18(14); 90-171.23(b).

**.0006 CONTINUING EDUCATION (CE)**

In order to maintain nurse practitioner approval to practice, beginning no sooner than two years after initial approval has been granted, the nurse practitioner must earn 30 hours of continuing education every two years. At least three hours of continuing education every two years shall be the study of the medical and social effects of substance abuse including abuse of prescription drugs, controlled substances, and illicit drugs. Continuing Education hours are those hours for which American Nursing Credentialing Center (ANCC) and Accreditation Council on Continuing Medical Education (ACCME) have granted approval. Documentation must be maintained by the nurse practitioner at each practice site and made available upon request to either Board.

Statutory Authority G.S. 90-6; 90-18(14); 90-171.23(14).

**.0007 INACTIVE STATUS**

(a) Any nurse practitioner who wishes to place his or her approval on inactive status may notify the Boards by completing the form supplied by the Boards.

(b) The registered nurse with inactive nurse practitioner status shall not practice as a nurse practitioner.

(c) The registered nurse with inactive nurse practitioner status who reapplies for approval to practice shall be required to meet the qualifications for approval as stipulated in Rule .0003(a)(1), (a)(3) - (a)(5) and (b) of this Subchapter.

Statutory Authority G.S. 90-18(13); 90-18.2; 90-171.36.

**.0008 .0006 PRESCRIBING AUTHORITY**

~~(a) The NP Applicant and supervising physicians shall acknowledge in the application that they are familiar with laws and rules regarding prescribing and shall agree to comply with these laws and rules by incorporating the laws and rules into their written standing protocols for each approved practice site.~~

(a) ~~(b)~~ The prescribing stipulations contained in the Rules apply to writing prescriptions and ordering the administration of medications.

(b) ~~(e)~~ Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the NP nurse practitioner in each the approved practice site must be included in the written standing protocols as outlined in Rule .0009(2) of this Section.
- (2) Controlled Substances (Schedules 2, 2N, 3, 3N,

4, 5) defined by the State and Federal Controlled Substances Acts may be prescribed or ordered as established in written standing protocols, providing all of the following restrictions are met:

- (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance.
- (B) ~~(A)~~ dosage units for schedules 2, 2N, 3 and 3N are limited to a one week's supply except Dextroamphetamine, Methylphenidate and Pemoline for the treatment of Attention Deficit Disorder which are limited to a 30 day supply; and
- (C) ~~(B)~~ the prescription or order for schedules 2, 2N, 3 and 3N may not be refilled. without a specific written or verbal order from the supervising physician and
- ~~(C) the NP has an assigned DEA number which is entered on each prescription for a controlled substance.~~
- (3) The NP nurse practitioner may prescribe a drug not included in the site specific written standing protocols only as follows:
  - (A) upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the NP nurse practitioner; and
  - (B) the written or verbal order as described in Part (e) ~~(b)(3)(A)~~ of this Rule must be entered into the patient record and signed by the NP nurse practitioner with a notation that it is ~~to be~~ issued on the specific order of the supervising physician. ~~(For example Mary Smith, NP on order of John Doe, M.D.)~~
- (4) Refills may be issued for a period not to exceed one year except for schedules 2, 2N, 3 and 3N controlled substances which ~~are excluded from refills~~ may not be refilled.
- (5) Each prescription must be noted on the patient's chart and include the following information:
  - (A) medication ~~dose~~ and dosage;
  - (B) amount prescribed;
  - (C) directions for use;
  - (D) number of refills; and
  - (E) signature of the NP nurse practitioner.
- (6) The prescribing number assigned by the ~~Medical Board of Medical Examiners~~ to the NP nurse practitioner must appear on all prescriptions issued by the NP nurse practitioner.
- (7) Prescription Format:
  - (A) All prescriptions issued by the NP nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the NP's nurse practitioner's name, telephone number and prescribing number.
  - (B) The NP's nurse practitioner's assigned DEA number shall be written on the prescription

form when a controlled substance is prescribed as defined in Subparagraph (e) (b)(2) of this Rule.

(c) ~~(d)~~ The NP nurse practitioner must ~~obtain approval to dispense these~~ drugs and devices included in the written standing protocols for each approved practice site from the Board of Pharmacy, and must carry out the function of dispensing in accordance with 21 NCAC 46 .1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.

Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14); 90-171.42; 58 Fed. Reg. 31, 171 (1993) (to be codified at 21 C.F.R. 1301).

## .0009 PHYSICIAN SUPERVISION

Supervision shall be provided by the approved responsible physician physician(s) as follows:

### (1) Availability:

- (a) The supervising physician shall be continuously available for direct communications by radio, telephone, or telecommunications.
- (b) The supervising physician shall be readily available ~~on a regularly scheduled basis~~ for consultation or referrals of patients from the NP nurse practitioner.
- (c) If the nurse practitioner is to perform duties at a site away from the supervising physician, the application must clearly specify the circumstances and the supervisory arrangements.

### (2) Written Standing Protocols:

- (a) Written standing protocols approved and signed by both the supervising physician(s) and the NP nurse practitioner shall be maintained in each approved practice site;
- (b) The written standing protocols shall include the drugs, devices, medical treatments, tests and procedures that may be prescribed, ordered and implemented by the NP nurse practitioner consistent with Rule .0006 .0008 of this Subchapter, and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting;
- (c) The written standing protocols shall include a pre-determined plan for emergency services;
- (d) The written standing protocols shall specify the process by which the NP nurse practitioner shall refer a patient to a physician other than an approved supervising physician;
- (e) The nurse practitioner must be prepared to demonstrate upon request to a member of either the Board of Nursing or the Medical Board, or an agent, the ability to perform medical acts as outlined in the site specific written standing protocols.

### (3) Countersigning of Medical Acts:

- (a) The maximum time interval between the NP's

nurse practitioner's contact with the patient and ~~chart~~ medical record review and countersigning of medical acts by the supervising physician is seven days for outpatient (clinic/office) nurse practitioner-patient contacts.

- (b) The time interval for countersigning of notations of medical acts in the medical records of inpatients (hospital, long-term care institutions) by the supervising physician must comply with the rules and regulations of the institution, but at a minimum:

- (i) the initial workup, medical orders and treatment plan, must be countersigned within seven days of the time of nurse practitioner-patient contact; and
- (ii) in the acute inpatient setting, the initial workup, medical orders and treatment plan must be countersigned and dated within two working days of the nurse practitioner-patient contact.

~~Countersigning time previously approved by the Board remain in effect until a change is specifically applied for and approved in accordance with Rule .0004 of this Section.~~

- ~~(e) A longer countersigning time interval may be considered by the Joint Subcommittee upon specific request. The request should explain the practice circumstances which necessitate the longer countersigning interval.~~
- ~~(d) All medical entries into the patient chart by an NP in all approved practice locations must be countersigned by the supervising physician, including medical progress notes; medical treatment rendered; test or procedures ordered; and notations of prescriptions, orders, or drugs dispensed.~~

### ~~(4) Supervision Distance:~~

- ~~(a) If the NP is to perform duties away from the supervising physician, the application must clearly specify the circumstances and the supervisory arrangements established to protect the patient.~~
- ~~(b) Details must be submitted describing distance, time, topography, physical characteristics, and communication ability between the NP and the supervising physician.~~

- (c) The time interval between the nurse practitioner-patient contact and countersigning by the supervising physician of the nurse practitioner's notations of medical acts in the medical records of patients in special community-based care programs, such as dialysis and hospice, must comply with the rules and regulations of the specific care program.

### (4) Supervising Physicians:

- (a) A physician in a graduate medical education program, whether fully licensed or holding only



a resident's training license, cannot be named as a supervising physician.

(b) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise ~~an NP a nurse practitioner~~ in the non-training situation if fully licensed and approved to supervise by the Medical Board.

(c) All physicians who may supervise the NP nurse practitioner in any manner must be approved in accordance with this Subchapter before NP nurse practitioner supervision occurs.

~~(6) The NP must be prepared to demonstrate upon request to a member of either the Board of Nursing or the Board of Medical Examiners, or one of its delegates, the ability to perform medical acts assigned by the supervising physician.~~

Statutory Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14).

#### .0010 ~~.0008~~ METHOD OF IDENTIFICATION

The NP nurse practitioner shall wear an appropriate name tag spelling out the words "Nurse Practitioner".

Statutory Authority G.S. 90-18(14).

#### .0011 ~~.0007~~ DISCIPLINARY ACTION

The approval of ~~an NP a nurse practitioner~~ may be restricted, denied or terminated by the Medical Board and the registered nurse license may be restricted, denied, or terminated by the Nursing Board, if, when, after due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, ~~the the appropriate Board shall find one or more of the following:~~

- (1) that the NP nurse practitioner has held himself out or permitted another to represent him as a licensed physician;
- (2) that the NP nurse practitioner has engaged or attempted to engage in the performance of medical acts other than at the direction of, or under the supervision of, a physician licensed by the Medical Board who is approved by the Board to be that nurse practitioner's supervising physician;
- (3) that the NP nurse practitioner has performed or attempted to perform medical acts for which the NP is not approved in the site specific standing protocols or for which the NP nurse practitioner is not qualified by education and training to perform; ~~including prescribing, ordering, or dispensing drugs not allowed by the Formulary~~
- ~~(4) that the NP is impaired physically, mentally, or professionally as a result of using mind altering chemicals;~~
- (4) (5) that the NP nurse practitioner has been convicted in any court of a felony or other criminal offense;

(5) (6) that the NP nurse practitioner is adjudicated mentally incompetent or that the NP's nurse practitioner's mental or physical condition renders the NP nurse practitioner unable to safely function as ~~an NP a nurse practitioner; or~~

(6) (7) that the NP nurse practitioner has failed to comply with any of the provisions of this Subchapter.

Statutory Authority G.S. 90-18(14); 90-171.37.

#### .0010 ANNUAL RENEWAL OF NP APPROVAL

~~(a) Nurse Practitioners approved in accordance with this Subchapter shall renew their approval annually with the Board of forms supplied by the Board on or before July 1 of each year.~~

~~(b) In the event failure to renew approval continues for a period of 30 days, the approval of the NP may be suspended by the Board after notice and hearing in accordance with G.S. 150B-38.~~

Statutory Authority G.S. 90-6; 90-18(14).

#### .0012 ~~.0011~~ FEES

(a) An application fee of ~~seventy-five dollars one hundred dollars (\$75.00) (\$100.00)~~ must be paid at the time of initial application for approval and each subsequent application for ~~employment changes approval to practice.~~ The ~~seventy-five dollar one hundred dollar (\$75.00) (\$100.00)~~ application fee shall be equally divided between the Board of Nursing and the ~~N.C. Medical Board of Medical Examiners.~~ No other fees are shared.

~~(b) An application fee of fifty dollars (\$50.00) must be paid at the time of application for a change of primary supervising physician.~~

(b) (e) The fee for annual renewal of approval, due July 1, is ~~twenty dollars fifty dollars (\$20.00) (\$50.00).~~

(c) (d) No portion of ~~the fees any fee~~ in this Rule is refundable.

Statutory Authority G.S. 90-6.

#### .0012 NP Forms

~~(a) The following documents regarding nurse practitioners may be obtained from the office of either the Board of Nursing or the Board of Medical Examiners:~~

- ~~(1) Rules for Approval of Nurse Practitioners, Subchapter 32M;~~
- ~~(2) Formulary;~~
- ~~(3) North Carolina Laws Regarding Nurse Practitioners; and~~
- ~~(4) Application for NP approval.~~

~~(b) The following documents are issued by the Board of Medical Examiners:~~

- ~~(1) Statement of Approval, upon being approved;~~
- ~~(2) application for Annual Renewal of Approval, mailed during June to all Nurse Practitioners~~



~~approved by May 1, and~~

~~(3) Certificate of Renewal, upon renewing approval.~~

Statutory Authority G.S. 150B-11.

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## CHAPTER 36 - BOARD OF NURSING

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend rules cited as 21 NCAC 36 .0401 - .0405.

**Proposed Effective Date:** December 1, 1995.

**A Public Hearing** will be conducted at 1:30 pm on September 21, 1995 at the Embassy Suites Hotel, 4800 South Tryon Street, Charlotte, NC.

**Reason for Proposed Action:** To be consistent with G.S. 90-171.55; DFS Rules - 10 NCAC 3H .0514 - .0517 and 42 U.S.C.S. 1395i-3 (1987).

**Comment Procedures:** Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written comments concerning this adoption must be submitted by September 14, 1995 to: North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602, ATTN: Jean H. Stanley, APA Coordinator.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

### SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

#### .0401 ROLES OF UNLICENSED PERSONNEL

(a) Definitions. As used in Section .0400:

- (1) "Nursing care activities" means activities performed by unlicensed personnel which are delegated by licensed nurses in accordance with paragraphs (b) and (c) of this Rule.
- (2) "Patient care activities" means activities performed by unlicensed personnel when health care needs are incidental to the personal care required and are not delegated by a licensed nurse.

(b) The Board of Nursing, as authorized by G.S. 90-171.23(b)(1)(2)(3), shall be the determining authority to identify those nursing care activities which may be delegated to unlicensed personnel. The licensed nurse, registered and practical, in accordance with 21 NCAC 36 .0224 and .0225 and G.S. 90-171.20(7)(8), may delegate nursing care activities to unlicensed personnel, regardless of title, that are appropriate to the level of knowledge and skill of the unlicensed personnel and are within the legal scope of

practice as defined by the Board of Nursing for unlicensed personnel. The licensed practical nurse assumes responsibility for delegating to and supervising unlicensed personnel in situations in which a registered nurse or other individual authorized by law is available for direct participation in client care as necessary to coordinate, assess, plan, implement, and evaluate that care. The registered nurse, or the licensed practical nurse, is responsible for supervision of the nursing care activities of the unlicensed personnel and maintains legal accountability and responsibility for nursing care given by all personnel to whom that care is delegated.

(c) Those activities which may be delegated to unlicensed personnel are determined by the following variables:

- (1) knowledge and skills of the unlicensed personnel; ~~which include both basic educational preparation (Level I) and training added through additional educational preparation and training (Level II);~~
- (2) verification of clinical competence of the unlicensed personnel by the employing agency;
- (3) stability of the client's condition which involves predictability, absence of risk of complication, and rate of change, and which thereby excludes delegation of nursing care activities which ~~require nursing assessment or judgment by a licensed nurse during the performance of the activity~~ do not meet the requirements defined in 21 NCAC 36 .0221(b);
- (4) the variables in each service setting which include but are not limited to:
  - (A) the complexity and frequency of nursing care needed by a given client population;
  - (B) the proximity of clients to staff;
  - (C) the number and qualifications of staff;
  - (D) the accessible resources; and
  - (E) established policies, procedures, practices, and channels of communication which lend support to the types of nursing activities being delegated, or not delegated, to unlicensed personnel.

Statutory Authority G.S. 90-171.20(2)(4)(7) d., e., g. (8); 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).

#### .0402 COORDINATION WITH DIVISION OF FACILITY SERVICES (DFS)

(a) ~~Rules in this Section pertaining to Level I nurse aide training and competency evaluation or Level I nurse aide competency evaluation shall be consistent with federal requirements for unlicensed nursing personnel. The Board of Nursing shall accept Level I nurse aides listed on the Division of Facility Services maintained Nurse Aide Registry as meeting the requirements of 21 NCAC 36 .0403(a).~~

(b) ~~Level I nurse aide training and competency evaluation programs and Level I nurse aide competency evaluation programs reviewed by the Division of Facility Services for~~

nursing facilities shall be approved by the Board of Nursing upon acceptance of the Division's process and criteria for implementation of such programs as identified in Rule .0405(a)(4) of this Section. The Board of Nursing shall maintain authority to regulate scope of practice of unlicensed personnel at all levels.

(c) The Board of Nursing shall receive requested information from the Division of Facility Services regarding nursing facilities to maintain the central registry of all qualified Level I nurse aides.

Statutory Authority G.S. 90-171.20(2)(4)(7) d., e., g., (8)(c).; 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).

#### .0403 QUALIFICATIONS

(a) ~~As of January 1, 1990, or consistent with any date amended by the Federal Government, but no later than January 1, 1991, a nursing facility, and by August 14, 1990 or consistent with any date amended by the Federal Government, but no later than January 1, 1991 for a home health agency, as mandated by the Omnibus Budget Reconciliation Act of 1987 [P.L. 100-203, 42 U.S.C.S. 1395i-3 (1987)], shall use any unlicensed individual as a Nurse Aide I, regardless of title, to provide nursing care activities, as identified in Rule .0405(e) of this Section, to clients longer than the first four months following initial hiring unless:~~

- (1) ~~the individual has successfully completed, in addition to an orientation program specific to the employing agency, a Board of Nursing approved Level I nurse aide training and competency evaluation program or a Board approved competency evaluation program; and~~
- (2) ~~the nursing facility or home health agency has inquired of the Board of Nursing as to information in the Nurse Aide Registry concerning the individual and has confirmed with the Board of Nursing that the individual is listed on the Nurse Aide Registry. Nursing facilities may also verify the registration of a Nurse Aide I with the Division of Facility Services.~~

(a) ~~(b) Pursuant to G.S. 90-171.55, As as of January 1, 1991, April 1, 1992 no individual may function a service agency, other than a nursing facility or a home health agency identified in Paragraph (a), of this Rule, shall use any unlicensed individual as a nurse aide I, regardless of title, to provide nursing care activities, as identified in Rule .0401(a) of this Section, to clients or residents until: for longer than the first four months following initial hiring unless:~~

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing agency facility, a Board of Nursing State approved Level I nurse aide training and competency evaluation program or its equivalent; or a Board State approved competency evaluation program; and the employing facility or agency has verified listing on the Division of

Facility Services Nurse Aide Registry (DFS/NAR); or

- (2) ~~the agency has inquired of the Board of Nursing as to information in the Nurse Aide Registry concerning the individual and has confirmed with the Board of Nursing that the individual is listed on the Nurse Aide Registry. the agency/facility has assured that the individual is enrolled full-time in a State approved nurse aide I training and competency evaluation program which the individual will successfully complete within four months of employment date.~~

(b) ~~(e) Pursuant to G.S. 90-171.55, As as of January 1, 1991 the date that these rules are effective, a service agency, home health agency, or a nursing facility shall not use any unlicensed no individual may function as a nurse aide II at the Nurse Aide Level II unless:~~

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing agency, a Board of Nursing approved Level II nurse aide training and competency evaluation program or its equivalent as identified by the Board of Nursing; and
- (2) the agency has inquired of the Board of Nursing as to information in the Board of Nursing Nurse Aide II Registry concerning the individual and confirms with the Board of Nursing that the individual is listed on the Board of Nursing Nurse Aide II Registry (BONNAR) as a nurse aide Level II, Level II; or
- (3) ~~The nurse aide(s) who performed any Nurse Aide II activity(ies) prior to March 1, 1989, may continue performing such activity(ies) in that agency until March 1, 1992. By March 1, 1992, the individual must successfully complete a Nurse Aide II Training and Competency Evaluation Program and submit a completed application and fee for listing on the Registry. By April 1, 1990 the nurse administrator of each agency must notify the Board of Nursing in writing of the following:~~

- (A) ~~name of each unlicensed person who had performed prior to March 1, 1989 and continues to performs any Nurse Aide II activity(ies);~~
- (B) ~~the Nurse Aide II activity(ies) being performed; and~~
- (C) ~~a plan indicating when each unlicensed person performing Nurse Aide II activity(ies) will complete a Nurse Aide II Training and Competency Evaluation Program and be listed on the Registry.~~

~~A copy of the notification shall be kept on file at the agency for review by the North Carolina Board of Nursing.~~

(c) ~~(d) Registration Listing on the a Nurse Aide Registry is not required if the care is performed by clients them-~~



selves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

*Statutory Authority G.S. 90-171.20(2)(4)(7) d., e., g.; 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).*

#### .0404 LISTING AND RENEWAL

(a) ~~The Board of Nursing shall maintain a list of nurse aides in the Nurse Aide Registry who are qualified in accordance with the requirements of Rule .0403 of this Section.~~ All nurse aide II's, regardless of working title, employed or assigned in a service agency or facility for the purpose of providing nursing care activities shall be listed on the Board of Nursing Aide II Registry and shall meet the following requirements:

- (1) successful completion of a nurse aide II program or its Board approved equivalent;
- (2) listing as a Level I nurse aide on the DFS Nurse Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- (3) submission of an application to the Board of Nursing for placement on the Board of Nursing Nurse Aide II Registry prior to working as a nurse aide II.

The application shall be submitted with the required fee within 30 days of completion of the nurse aide II program. Applications for initial listing received in the Board office between April and June shall show an expiration date of June 30 of the following year.

(b) ~~All nurse aides, regardless of working title, employed or assigned in a service agency for the purpose of providing nursing care activities shall, upon successful completion of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program, submit an application to the Board of Nursing for placement on the Nurse Aide Registry. The application shall be submitted with an annual fee. Employers are encouraged, whenever possible, to submit the fee for their nurse aides. The Board will establish a process which facilitates the payment of the fee by the employer.~~

(c) ~~A nurse aide employed as of January 1, 1990 in a nursing facility or home health agency, as mandated by 42 U.S.C.S. 1395i-3 (1987), shall successfully complete a Board of Nursing approved training and competency evaluation program or a competency evaluation program prior to submitting an application to the Board of Nursing for placement on the Nurse Aide Registry.~~

(d) ~~A nurse aide employed in a service agency as of January 1, 1991 shall successfully complete a Board of Nursing approved training and competency evaluation program or an approved competency evaluation program prior to submitting an application to the Board of Nursing for placement on the Nurse Aide Registry.~~

(b) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring listing as a

nurse aide II shall submit:

- (1) An application with fee; and
- (2) A listing form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours to that required for a nurse aide II.

(c) Registered nurses and licensed practical nurses who hold current, unrestricted licenses in North Carolina, and registered nurses and licensed practical nurses in the discipline process by the Board of Nursing who have been granted approval by the Board of Nursing or its designee may make application as a nurse aide II.

(d) ~~(f) Any nurse aide who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation, shall successfully complete a new training and competency evaluation program and submit an application to be placed on the Nurse Aide Registry. An individual previously enrolled in a Board approved nursing program leading to licensure as RN or LPN may list with no additional testing provided the student withdrew from school in good standing within the last 24 months and completed the equivalent content and clinical hours. Such individual shall submit listing form as described in Paragraph (b)(2) of this Rule. If the student was in good standing upon withdrawal from the school and withdrew from the school in excess of 24 months, the student must complete entire nurse aide II program.~~

(e) ~~(g) The Division of Facility Services, or any other employing agency, is responsible for investigating complaints related to nurse aides. If, following a timely review and investigation of allegations of client neglect or abuse or misappropriation of client property, the agency determines that the nurse aide has neglected or abused the client or misappropriated client property, the agency shall notify the Board of Nursing within ten business days. The investigating agency's findings indicating a nurse aide has neglected or abused a client or misappropriated client property shall be available to the public upon inquiry to the Nurse Aide Registry. Any information disclosed concerning such a finding shall include the findings and a statement whether the individual has disputed the findings. Individuals who have completed a training course equivalent in content and clinical hours to the nurse aide II program, may submit documentation of same to the Board of Nursing for review. If training is equivalent, the individual may submit the application with required fee and be listed on the Board of Nursing Nurse Aide Registry as a nurse aide II.~~

(f) An employing agency or facility may choose up to four nurse aide II tasks to be performed by nurse aide I personnel without the nurse aide I completing the entire nurse aide II program.

- (1) The agency may obtain the selected tasks curriculum model from the nearest Community College or the Board of Nursing or may submit a self generated curriculum to the Board for approval. Board approval must be obtained prior to teaching the nurse aide II tasks.



- (2) Once approval has been obtained, the Board of Nursing must be notified of the nurse aide II task(s) that will be performed by nurse aide I personnel in the agency and for which all Board stipulations have been met. The notification of nurse aide II task(s) form which may be requested from the Board office shall be used. Each agency shall receive a verification letter once the Board has been appropriately notified.
- (3) Documentation of the training and competency evaluation must be maintained for each nurse aide I who is approved to perform nurse aide II task(s) within the agency.
- (g) ~~(e)~~ Each nurse aide II shall renew his/her registration on a biennial basis listing with the Board of Nursing biennially on forms provided by the Board. The renewal application shall be accompanied by the required fee.
- (1) To be eligible for renewal, the nurse aide II must have worked at least eight hours for compensation during the past 24 months performing nursing care activities under the supervision of a Registered Nurse.
- (2) Any nurse aide II who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation but who has performed patient care activities for monetary compensation shall successfully complete the competency evaluation portion of the nurse aide II program and submit application in order to be placed on the Board of Nursing Nurse Aide II Registry.
- (3) A nurse aide II who has performed no nursing care or patient care activities for monetary compensation within the past 24 months must successfully complete a nurse aide II program prior to submitting the application for renewal.
- (4) Failure to renew listing card by expiration date may result in a reinstatement penalty.
- (5) A nurse aide II who has substantiated findings of abuse, neglect, or misappropriation of funds of the DFS Nurse Aide Registry shall not be eligible for renewal as a nurse aide II.

Statutory Authority G.S. 90-171.19; G.S. 90-171.20(2)(4)(7) d., e., g.; 90-171.37; 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).

#### .0405 APPROVAL OF NURSE AIDE EDUCATION PROGRAMS

- (a) The Board of Nursing will accept those programs approved by DFS to prepare the nurse aide I.
- (b) ~~(a)~~ The North Carolina Board of Nursing shall approve nurse aide II nurse aide training and competency evaluation programs and nurse aide competency evaluation programs which prepare two levels of nurse aides. Nurse aide II training and competency evaluation

~~programs and nurse aide competency evaluation programs~~ may be offered by an individual, agency, or educational institution ~~once~~ after the program is approved by the Board.

- (1) ~~Each entity desiring to offer a nurse aide II training and competency evaluation program or competency evaluation program shall submit the a program for approval application at least 60 days prior to offering the program. It shall include documentation of the following standards:~~
- (A) policy established which provides for supervised clinical experience with faculty/student ratio not to exceed 1:10;
- (B) Board of Nursing approval of each clinical facility for student use;
- (C) a written contract between the program and clinical facility prior to admitting students to the facility for clinical experience;
- (D) admission requirements which include:
- (i) successful completion of nurse aide I training program or Board of Nursing established equivalent and current nurse aide I listing on DFS Registry; and
- (ii) GED or high school diploma; and
- (iii) other admission requirements as identified by the program; and
- (E) policy regarding the processing and disposition of program and student complaints.
- ~~(2) Nurse aide training and competency evaluation programs and competency evaluation programs shall be submitted for reapproval when the program is changed substantially, or at least every two years.~~
- ~~(3) The Board of Nursing representatives may survey nurse aide training and competency evaluation programs, competency evaluation programs, and associated clinical service agencies to determine the program's compliance with the requirements of the Board.~~
- ~~(4) The Board of Nursing may approve a nurse aide training and competency evaluation program or nurse aide competency evaluation program which is approved by another state agency, if the Board of Nursing has reviewed the state agency's process and criteria of approval of nurse aide education programs and determines the process and criteria ensure that the Board of Nursing's requirements are met.~~
- (2) (b) The Board shall identify and publish on an annual basis the minimum course content and minimum hours of instruction for Level I and Level II nurse aide education programs. Level I Nurse Aide education programs shall include a minimum of 75 hours. Level II nurse aide education programs shall include a minimum of 80 hours of theory and 80 hours of supervised

clinical instruction consistent with the legal scope of practice as defined by the Board of Nursing. Changes made by the Board of Nursing in content hours or scope of practice in the nurse aide II program shall be published in the Bulletin. Requests by the programs to modify the nurse aide II course content shall be directed to the Board office.

(e) ~~Each Nurse Aide Level I course must include:~~

- (1) ~~Basic nursing skills;~~
- (2) ~~Personal care skills;~~
- (3) ~~Recognition of mental health and social service needs, including, but not limited to, the aging process;~~
- (4) ~~Basic restorative services;~~
- (5) ~~Client's rights;~~
- (6) ~~Body mechanics;~~
- (7) ~~Nutrition;~~
- (8) ~~Elimination;~~
- (9) ~~Safety;~~
- (10) ~~Communication and documentation;~~
- (11) ~~Special procedures;~~
- (12) ~~Roles of members of the health care team.~~

(d) ~~Each Nurse Aide Level II course must include content identified as appropriate for the Level II Nurse Aide by the Board of Nursing. The Level II Nurse Aide training and competency evaluation program prepares the Nurse Aide II through additional theory and clinical instruction to perform more complex skills as identified by the Board of Nursing as appropriate for unlicensed personnel.~~

(e) ~~Each competency evaluation program shall include content to verify the knowledge and skills of the nurse aide who successfully completes the course as being comparable for the appropriate level of nurse aide.~~

(3) (f) ~~The Board shall identify and publish on an annual basis minimum competencies and qualifications for faculty for the nurse aide Level I and Level II Training and Competency Evaluation Programs and Competency Evaluation programs. Each faculty shall:~~

- (A) (1) ~~hold a current unrestricted North Carolina license as a registered nurse;~~
- (B) (2) ~~have had at least two years of direct patient care experiences as an R.N.; and~~
- (C) (3) ~~have demonstrated competency to teach experience teaching adult learners.~~

(4) (g) ~~Each nurse aide II training and competency evaluation program and each competency evaluation program shall file with the Board such records, data, and reports as may be required by the Board in order to furnish information concerning operation of the program and any individual who successfully completes the program. Programs approved under Rule .0402(b) of this Section shall furnish such information to the Division of Facility Services.~~

(5) (h) ~~When an approved nurse aide training and~~

~~competency evaluation nurse aide II program or a competency evaluation program closes, the Board shall be notified in writing by the program. or the Division of Facility Services. The Board shall be informed as to permanent storage of student records.~~

(c) An annual program report shall be submitted by the Program Director to the Board of Nursing on Board approved form by March 15 of each year. Failure to submit annual report shall result in administrative action affecting approval status as described in 21 NCAC 36 .0405(5)(d) and

(e). Nurse aide II programs may be surveyed on site for cause as identified by the Board or Nursing.

(d) Approval status will be determined by the Board of Nursing using the annual program report, survey report and other data submitted by the program, agencies, or students. The determination shall result in full approval or approval with stipulations.

(e) If stipulations have not been met as specified by the Board of Nursing, a hearing will be held by the Board of Nursing regarding program approval status. A program may continue to operate while awaiting the hearing before the Board. EXCEPTION: In the case of summary suspension of approval, the program must immediately cease operation.

(1) When a hearing is scheduled, the Board shall cause notice to be served on the program and shall specify a date for the hearing to be held not less than 20 days from the date on which notice is given.

(2) If the Board determines from evidence presented at hearing that the program is complying with the Law and all rules, the Board shall assign the program Full Approval status.

(3) If the Board, following a hearing, finds that the program is not complying with the Law and all rules, the Board shall withdraw approval.

(A) this action constitutes discontinuance of the program; and

(B) the parent institution shall present a plan to the Board for transfer of students to approved programs or fully refund tuition paid by the student. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board; and

(C) the parent institution shall notify the Board of the arrangements for storage of permanent records.

(i) ~~Nursing students currently enrolled in Board of Nursing approved nursing programs desiring registration as a Nurse Aide I or II shall submit:~~

- (1) ~~An application; and~~
- (2) ~~A verification form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours as required for a Nurse Aide I or~~



H.

~~(j) Registered nurses and licensed practical nurses who hold current, unencumbered licenses in North Carolina may make application as a Nurse Aide I or II.~~

*Statutory Authority G.S. 90-171.20(2)(4)(7)d., e., g.; 90-171.39; 90-171.40; 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).*

**T**he List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

**K**ey:

Citation = Title, Chapter, Subchapter and Rule(s)  
 AD = Adopt  
 AM = Amend  
 RP = Repeal  
 With Chgs = Final text differs from proposed text  
 Corr = Typographical errors or changes that requires no rulemaking  
 Eff. Date = Date rule becomes effective  
 Temp. Expires = Rule was filed as a temporary rule and expires on this date or 180 days

## NORTH CAROLINA ADMINISTRATIVE CODE

JULY 95

TITLE	DEPARTMENT	TITLE	DEPARTMENT
7	Cultural Resources	21	Occupational Licensing Boards
10	Human Resources	1 - Acupuncture	
11	Insurance	8 - CPA Examiners	
12	Justice	10 - Chiropractic Examiners	
15A	Environment, Health, and Natural Resources	37 - Nursing Home Administrators	
		58 - Real Estate Commission	
		60 - Refrigeration Examiners	
		23	Community Colleges
		24	Independent Agencies
		5 - Health Plan Purchasing Alliance Board	
		25	Personnel

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
7 NCAC 2F .0002		✓				08/01/95	
10 NCAC 3U .0302		✓		✓		01/01/96	
.0506		✓				01/01/96	
.0509		✓		✓		01/01/96	
.0601		✓				01/01/96	
.0602		✓		✓		01/01/96	
.0705		✓		✓		01/01/96	
.0714		✓				01/01/96	
.0802		✓		✓		01/01/96	
.0803		✓				01/01/96	
.1402		✓		✓		01/01/96	
.1403		✓				01/01/96	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3U	.1717		✓				01/01/96	
			.2603		✓		✓		01/01/96	
			.2610		✓		✓		01/01/96	
	26H		.0302		✓		✓		08/01/95	
			.0304 - .0305		✓		✓		08/01/95	
			.0308		✓		✓		08/01/95	
	26M		.0301					✓		
	41F		.0706		✓				08/01/95	
			.0812		✓				08/01/95	
11	NCAC	6A	.0812	✓			✓		08/01/95	
12	NCAC	9A	.0204		✓				08/01/95	
		9B	.0113		✓				08/01/95	
			.0201 - .0202		✓		✓		08/01/95	
			.0206		✓		✓		08/01/95	
			.0210		✓		✓		08/01/95	
			.0212 - .0214		✓		✓		08/01/95	
			.0226 - .0228		✓		✓		08/01/95	
			.0232 - .0233		✓		✓		08/01/95	
	9C		.0401		✓				01/01/96	
			.0601		✓		✓		08/01/95	
	9D		.0102		✓		✓		08/01/95	
			.0104 - .0105		✓		✓		08/01/95	
			.0106		✓				08/01/95	
15A	NCAC	2B	.0101		✓		✓		08/01/95	
			.0104		✓		✓		08/01/95	
			.0202		✓		✓		08/01/95	
			.0211		✓		✓		08/01/95	
			.0301		✓				08/01/95	
	2D		.0531					✓		
			.0902					✓		
	2Q		.0801 - .0807	✓			✓		08/01/95	
	4B		.0028	✓			✓		08/01/95	
	16A		.1103		✓		✓		08/01/95	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	16A	.1104		✓				08/01/95	
			.1106		✓		✓		08/01/95	
		19A	.0202		✓		✓		08/01/95	
		21D	.0706		✓		✓		08/01/95	
21	NCAC	1	.0101		✓				08/01/95	
			.0104					✓		
			.0301					✓		
			.0401 - .0402	✓			✓		08/01/95	
		8F	.0105		✓				08/01/95	
			.0113	✓					08/01/95	
		8G	.0401		✓				08/01/95	
		8J	.0005		✓				08/01/95	
			.0008		✓				08/01/95	
		8K	.0200					✓		
		8M	.0104		✓		✓		08/01/95	
			.0306		✓				08/01/95	
			.0401		✓				08/01/95	
		8N	.0203		✓				08/01/95	
			.0302		✓				08/01/95	
			.0307		✓		✓		08/01/95	
		10	.0203		✓		✓		08/01/95	
		37	.0101		✓		✓		08/01/95	
			.0502		✓		✓		08/01/95	
			.0603		✓				08/01/95	
			.0912		✓				08/01/95	
		58A	.0403		✓				08/01/95	
			.0503		✓				08/01/95	
			.0505		✓				08/01/95	
		60	.0102		✓				08/01/95	
			.0204		✓				08/01/95	
			.0314		✓				08/01/95	
			.1102		✓				08/01/95	
23	NCAC	2C	.0604		✓		✓		08/01/95	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
24	NCAC	5	.0401 - .0415	✓			✓		08/01/95	
25	NCAC	1C	.0207			✓			08/01/95	
			.0402 - .0407		✓		✓		08/01/95	
			.0408		✓				08/01/95	
	1D		.0201		✓		✓		08/01/95	
			.0205		✓		✓		08/01/95	
			.0207		✓		✓		08/01/95	
			.0211		✓				08/01/95	
			.0808		✓				08/01/95	
			.1001		✓				08/01/95	
			.1009		✓				08/01/95	
			.1201		✓				08/01/95	
			.1204		✓		✓		08/01/95	
			.1401		✓		✓		08/01/95	
			.1801 - .1802		✓		✓		08/01/95	
	1E		.0804		✓		✓		08/01/95	
	1K		.0312		✓		✓		08/01/95	

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).*

## DEPARTMENT OF COMMUNITY COLLEGES

### Community Colleges

23 NCAC 2C .0604 - Program Review	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	07/13/95

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	Obj. Cont'd	05/18/95
Rule Returned to Agency	Obj. Cont'd	06/14/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	06/27/95

### Environmental Management

15A NCAC 2B .0201 - Antidegradation Policy (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0202 - Definitions	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters	RRC Objection	07/13/95
Agency Revised Rule (Noticed in 9:23, 1979)	Obj. Removed	07/13/95
15A NCAC 2B .0212 - Fresh Surface Water Quality Stds. for Class WS-I Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0214 - Fresh Surface Water Quality Stds. for Class WS-II Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0215 - Fresh Surface Water Quality Stds. for Class WS-III Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0216 - Fresh Surface Water Quality Stds. for WS-IV Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0218 - Fresh Surface Water Quality Stds. for Class WS-V Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0219 - Fresh Surface Water Quality Stds. for Class B Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0220 - Tidal Salt Water Quality Stds. for Class SC Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0221 - Tidal Salt Water Quality Stds. for Class SA Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0222 - Tidal Salt Water Quality Stds. for Class SB Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0223 - Nutrient Sensitive Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0224 - High Quality Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0225 - Outstanding Resource Waters (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0226 - Exemptions from Surface Water Quality Standards (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0227 - Water Quality Management Plans (Noticed in 9:24, 2073)		
Rule Withdrawn by Agency		06/14/95

15A NCAC 2B .0228 - Effluent Channels (Noticed in 9:24, 2073)

Rule Withdrawn by Agency

06/14/95

**Health: Epidemiology**

15A NCAC 19A .0202 - Control Measures - HIV

Agency Revised Rule

RRC Objection

06/14/95

Obj. Removed

07/13/95

**HUMAN RESOURCES**

**Facility Services**

10 NCAC 3C .3001 - Definitions

RRC Objection

07/13/95

10 NCAC 3C .3108 - Suspension of Admissions

RRC Objection

07/13/95

10 NCAC 3C .3205 - Discharge of Minor or Incompetent

RRC Objection

07/13/95

10 NCAC 3C .3302 - Minimum Provisions of Patient's Bill of Rights

RRC Objection

07/13/95

10 NCAC 3C .3502 - Bylaws

RRC Objection

07/13/95

10 NCAC 3C .3602 - Responsibilities

RRC Objection

07/13/95

10 NCAC 3C .3603 - Personnel Policies and Practices

RRC Objection

07/13/95

10 NCAC 3C .3607 - Personnel Health Requirements

RRC Objection

07/13/95

10 NCAC 3C .3608 - Insurance

RRC Objection

07/13/95

10 NCAC 3C .3704 - Status

RRC Objection

07/13/95

10 NCAC 3C .3902 - Manager

RRC Objection

07/13/95

10 NCAC 3C .3904 - Patient Access

RRC Objection

07/13/95

10 NCAC 3C .4003 - Policies and Procedures

RRC Objection

07/13/95

10 NCAC 3C .4102 - Classification of Optional Emergency Services

RRC Objection

07/13/95

10 NCAC 3C .4104 - Medical Director

RRC Objection

07/13/95

10 NCAC 3C .4203 - Nursing Staff

RRC Objection

07/13/95

10 NCAC 3C .4303 - Nursing Services Maternal Services

RRC Objection

07/13/95

10 NCAC 3C .4307 - Nursing Staff of Neonatal Services

RRC Objection

07/13/95

10 NCAC 3C .4401 - Organization

RRC Objection

07/13/95

10 NCAC 3C .4502 - Pharmacist

RRC Objection

07/13/95

10 NCAC 3C .4512 - Medications Dispensed

RRC Objection

07/13/95

10 NCAC 3C .4702 - Organization

RRC Objection

07/13/95

10 NCAC 3C .4703 - Sanitation and Safety

RRC Objection

07/13/95

10 NCAC 3C .4704 - Distribution of Food

RRC Objection

07/13/95

10 NCAC 3C .4705 - Nutritional Support

RRC Objection

07/13/95

10 NCAC 3C .4801 - Organization

RRC Objection

07/13/95

10 NCAC 3C .4905 - Tissue Removal and Disposal

RRC Objection

07/13/95

10 NCAC 3C .5002 - Delivery of Care

RRC Objection

07/13/95

10 NCAC 3C .5201 - Psychiatric/Substance Abuse Svcs.: Applicability of Rules

RRC Objection

07/13/95

10 NCAC 3C .5202 - Definitions Applicable/Psychiatric/Substance Abuse Svcs.

RRC Objection

07/13/95

10 NCAC 3C .5205 - Seclusion

RRC Objection

07/13/95

10 NCAC 3C .5302 - Definitions

RRC Objection

07/13/95

10 NCAC 3C .5309 - Nursing/Health Care Administration and Supervision

RRC Objection

07/13/95

10 NCAC 3C .5315 - Dental Care

RRC Objection

07/13/95

10 NCAC 3C .5318 - Activities and Recreation

RRC Objection

07/13/95

10 NCAC 3C .5319 - Social Services

RRC Objection

07/13/95

10 NCAC 3C .5322 - Brain Injury Extended Care Physician Services

RRC Objection

07/13/95

10 NCAC 3C .5323 - Brain Injury Extended Care Program Requirements

RRC Objection

07/13/95

10 NCAC 3C .5324 - Special Nursing Req. Brain Injury Long Term Care

RRC Objection

07/13/95

10 NCAC 3C .5325 - Ventilator Dependence

RRC Objection

07/13/95

10 NCAC 3C .5326 - Physician Services for Ventilator Dependent Patients

RRC Objection

07/13/95

10 NCAC 3C .5403 - HIV Designated Unit Policies and Procedures

RRC Objection

07/13/95

10 NCAC 3C .5405 - Physician Services in a HIV Designated Unit

RRC Objection

07/13/95

10 NCAC 3C .5407 - Use of Investigational Drugs on the HIV Designated Unit

RRC Objection

07/13/95

10 NCAC 3C .5501 - Definitions

RRC Objection

07/13/95



## RRC OBJECTIONS

10 NCAC 3C .5502 - Physician Reg. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
10 NCAC 3C .5507 - Comprehensive Rehabilitation Personnel Administration	RRC Objection	07/13/95
10 NCAC 3C .5508 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
10 NCAC 3C .5512 - Additional Req. for Traumatic Brain Injury Patients	RRC Objection	07/13/95
10 NCAC 3C .5513 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
10 NCAC 3C .6102 - List of Referenced Codes and Standards	RRC Objection	07/13/95
10 NCAC 3C .6208 - Obstetrical Department Requirements	RRC Objection	07/13/95
10 NCAC 3H .2001 - Definitions	RRC Objection	07/13/95
10 NCAC 3H .2201 - Administrator	RRC Objection	07/13/95
10 NCAC 3H .2202 - Admissions	RRC Objection	07/13/95
10 NCAC 3H .2203 - Patients Not to be Admitted	RRC Objection	07/13/95
10 NCAC 3H .2206 - Medical Director	RRC Objection	07/13/95
10 NCAC 3H .2209 - Infection Control	RRC Objection	07/13/95
10 NCAC 3H .2212 - Quality Assurance Committee	RRC Objection	07/13/95
10 NCAC 3H .2301 - Patient Assessment and Care Planning	RRC Objection	07/13/95
10 NCAC 3H .2302 - Nursing Services	RRC Objection	07/13/95
10 NCAC 3H .2308 - Domiciliary Home Personnel Requirements	RRC Objection	07/13/95
10 NCAC 3H .2401 - Maintenance of Medical Records	RRC Objection	07/13/95
10 NCAC 3H .2501 - Availability of Physician's Services	RRC Objection	07/13/95
10 NCAC 3H .2505 - Brain Injury Long-Term Care Physician Services	RRC Objection	07/13/95
10 NCAC 3H .2506 - Physician Services for Ventilator Dependent Patients	RRC Objection	07/13/95
10 NCAC 3H .2601 - Availability of Pharmaceutical Services	RRC Objection	07/13/95
10 NCAC 3H .2604 - Drug Procurement	RRC Objection	07/13/95
10 NCAC 3H .2605 - Drug Storage and Disposition	RRC Objection	07/13/95
10 NCAC 3H .2606 - Pharmaceutical Records	RRC Objection	07/13/95
10 NCAC 3H .2607 - Emergency Drugs	RRC Objection	07/13/95
10 NCAC 3H .2701 - Provision of Nutrition and Dietetic Services	RRC Objection	07/13/95
10 NCAC 3H .2801 - Activity Services	RRC Objection	07/13/95
10 NCAC 3H .2802 - Social Services	RRC Objection	07/13/95
10 NCAC 3H .3002 - Quality of Specialized Rehabilitation Services	RRC Objection	07/13/95
10 NCAC 3H .3003 - Ventilator Dependence	RRC Objection	07/13/95
10 NCAC 3H .3004 - Brain Injury Long-Term Care	RRC Objection	07/13/95
10 NCAC 3H .3005 - Special Nursing Req. for Brain Injury Long-Term Care	RRC Objection	07/13/95
10 NCAC 3H .3011 - HIV Designated Unit Policies and Procedures	RRC Objection	07/13/95
10 NCAC 3H .3012 - Physician Services in an HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3H .3013 - Special Nursing Requirements for an HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3H .3015 - Use of Investigational Drugs for HIV Designated Units	RRC Objection	07/13/95
10 NCAC 3H .3016 - Additional Social Work Req. for HIV Designated Units	RRC Objection	07/13/95
10 NCAC 3H .3021 - Physician Req. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
10 NCAC 3H .3027 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
10 NCAC 3H .3031 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
10 NCAC 3H .3103 - Site	RRC Objection	07/13/95
10 NCAC 3H .3201 - Required Spaces	RRC Objection	07/13/95
10 NCAC 3H .3401 - Heating and Air Conditioning	RRC Objection	07/13/95
10 NCAC 3H .3404 - Other	RRC Objection	07/13/95
10 NCAC 3O .0305 - Persons Subject to Licensure	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0506 - Simplified Reporting for Certain Organizations	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0607 - License Year	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3U .0705 - Special Training Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1403 - Aquatic Activities	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1717 - Health, Safety and Sanitation Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

## RRC OBJECTIONS

RRC has Objected to the Following Repeals in 10 NCAC 3C and 10 NCAC 3H:

10 NCAC 3C .0101 - .0102, .0104 - .0110, .0201 - .0203, .0301 - .0307, .0401 - .0407, .0501 - .0505, .0601 - .0604, .0701 - .0708, .0801 - .0805, .0807, .0901 - .0917, .1001 - .1006, .1101 - .1102, .1201 - .1204, .1301 - .1303, .1401 - .1405, .1501 - .1508, .1510, .1601 - .1606, .1701 - .1717, .1801 - .1805, .1901 - .1912, .1915 - .1932, .2001 - .2008, .2020 - .2033, .2101 - .2105.

10 NCAC 3H .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807.

### Medical Assistance

10 NCAC 26H .0302 - Reporting Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0304 - Rate Setting Methods for Non-state Facilities	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0305 - Allowable Costs	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0308 - Rate Appeals	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

### INDEPENDENT AGENCIES

#### State Health Plan Purchasing Alliance Board

24 NCAC 5 .0202 - Establishment of Alliance Market Areas	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	06/14/95
24 NCAC 5 .0401 - Purpose		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0402 - Definitions		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0403 - Application for Membership		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0404 - Participation Requirements		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0405 - Annual Renewal		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0406 - Employer Qualification and Employee Enrollment Period		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0407 - Waiting Period		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0408 - Open Enrollment Period		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0409 - Enrollment Additions Outside Open Enrollment		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0410 - Disenrollment of Member Small Employer		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0411 - Disenrollment of Enrollees		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0412 - Continuation of Benefits		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0413 - Payment to Insurance Agents and Brokers		
Rule Withdrawn by Agency		06/14/95
24 NCAC 5 .0414 - Alliance Participation Fee		
Rule Withdrawn by Agency		06/14/95
Agency Resubmitted Rule	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
24 NCAC 5 .0415 - Notification of Rate Changes		

<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0416 - Employer Monthly Payment Procedures and Requirements		
<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0417 - Overdue Payments; Late Fees; Termination		
<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0418 - Reinstatement Following Termination for Non-Payment		
<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0419 - Monthly Payments to AHCS		
<i>Rule Withdrawn by Agency</i>		06/14/95

## **JUSTICE**

### **Criminal Justice Education and Training Standards**

12 NCAC 9B .0202 - Responsibilities of the School Director	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	Obj. Removed	07/13/95
12 NCAC 9B .0206 - Basic Training -- Correctional Officers	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	Obj. Removed	07/13/95
12 NCAC 9D .0104 - Intermediate Law Enforcement Certificate	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	Obj. Removed	07/13/95
12 NCAC 9D .0105 - Advanced Law Enforcement Certificate	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	Obj. Removed	07/13/95

## **LABOR**

### **OSHA**

13 NCAC 7F .0201 - Construction	RRC Objection	06/14/95
<i>Agency Revised Rule</i>	Obj. Removed	06/14/95

## **LICENSING BOARDS AND COMMISSIONS**

### **Acupuncture Licensing Board**

21 NCAC 1 .0301 - Standards for Continuing Education	RRC Objection	06/14/95
<i>Agency Revised Rule</i>	Obj. Removed	06/14/95

### **Board of Certified Public Accountant Examiners**

21 NCAC 8M .0102 - Registration Requirements	RRC Objection	07/13/95
21 NCAC 8M .0104 - Firms Deemed in Compliance	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	Obj. Removed	07/13/95
21 NCAC 8N .0307 - Firm Names	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	Obj. Removed	07/13/95

### **Board of Nursing Home Administrators**

21 NCAC 37 .0502 - Application to Become Administrator-In-Training	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	Obj. Removed	07/13/95
21 NCAC 37 .0914 - Duplicate Licenses		
<i>Rule Withdrawn by Agency</i>		07/13/95

### **Board of Licensed Professional Counselors**

21 NCAC 53 .0208 - Supervised Professional Practice	RRC Objection	06/14/95
<i>Agency Revised Rule</i>	Obj. Removed	06/14/95
21 NCAC 53 .0309 - Agreement to Abide by NCBLPC Ethical Standards	RRC Objection	06/14/95



Agency Revised Rule

Obj. Removed

06/14/95

**Board of Practicing Psychologists**

21 NCAC 54 .2704 - HSP-P Requirements On and After June 30, 1994

Rule Returned to Agency

RRC Objection

05/18/95

Agency Filed Rule for Codification Over RRC Objection

Obj. Cont'd

06/14/95

Eff. 06/21/95

21 NCAC 54 .2705 - HSP-PP Requirements

Rule Returned to Agency

RRC Objection

05/18/95

Agency Filed Rule for Codification Over RRC Objection

Obj. Cont'd

06/14/95

Eff. 06/21/95

21 NCAC 54 .2706 - HSP-PA Requirements On and After June 30, 1994

Rule Returned to Agency

RRC Objection

05/18/95

Agency Filed Rule for Codification Over RRC Objection

Obj. Cont'd

06/14/95

Eff. 06/21/95

**Real Estate Commission**

21 NCAC 58E .0203 - Application and Criteria for Original Approval

Agency Revised Rule

RRC Objection

06/14/95

Obj. Removed

06/14/95

**STATE PERSONNEL****Office of State Personnel**

25 NCAC 1C .0405 - Temporary Appointment

Agency Revised Rule

RRC Objection

07/13/95

Obj. Removed

07/13/95

25 NCAC 1C .0407 - Temporary Part-Time Appointment

Agency Revised Rule

RRC Objection

07/13/95

Obj. Removed

07/13/95

25 NCAC 1D .2001 - Coverage

Agency Repealed Rule

RRC Objection

07/13/95

Obj. Removed

07/13/95

25 NCAC 1E .0305 - Use of Sick Leave

Agency Revised Rule

RRC Objection

06/14/95

Obj. Removed

06/14/95

25 NCAC 1E .1302 - Policy

Agency Revised Rule

RRC Objection

06/14/95

Obj. Removed

06/14/95

25 NCAC 1E .1304 - Qualifying to Participate in Voluntary Shared Leave Program

Agency Revised Rule

RRC Objection

06/14/95

Obj. Removed

06/14/95

25 NCAC 1K .0312 - Eligibility

Agency Revised Rule

RRC Objection

07/13/95

Obj. Removed

07/13/95

25 NCAC 1N .0201 - Purpose (Noticed in 9:23, 2018)

Rule Withdrawn by Agency

06/14/95

**TRANSPORTATION****Division of Highways**

19A NCAC 2B .0221 - General Motorist Services Signs

Agency Revised Rule

RRC Objection

06/14/95

Obj. Removed

06/14/95

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ADMINISTRATION</b>				
<i>Division of Purchase and Contract</i>				
Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
CMC Maintenance Co., a Div. of RDS Corp. v. Dept. of Administration, Div. of Purchase & Contract, et al.	95 DOA 0194	Phipps	06/13/95	
<i>State Construction Office</i>				
W. M. Piatt & Company v. State Construction Office, DOA	94 DOA 0738	Nesnow	04/11/95	10:03 NCR 221
Holland Group, Inc. v. Dept. of Administration, St. Construction Office	94 DOA 1565	Nesnow	06/01/95	10:07 NCR 619
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Ali Alsaras v. Alcoholic Beverage Control Commission	94 ABC 0526	Chess	05/16/95	
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
Robert Johnson v. Alcoholic Beverage Control Commission	94 ABC 1661	West	05/01/95	
Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1682	Chess	05/03/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.	94 ABC 1694	Mann	03/29/95	
John H. Robinson v. Alcoholic Beverage Control Commission	94 ABC 1727	Morrison	05/18/95	
Clara and Carson Young v. Alcoholic Beverage Control Commission	94 ABC 1729	Chess	05/11/95	
Bryan Lynn Whitaker, Susan Ansley Whitaker v. ABC Commission	94 ABC 1784	Mann	04/19/95	
Diamond Club, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1803	Mann	04/07/95	
Alcoholic Beverage Control Commission v. Weisner, Inc.	95 ABC 0068	West	06/07/95	
Robert Louis Reese v. Alcoholic Beverage Control Commission	95 ABC 0074	Chess	05/25/95	
Ray E. Bailey v. Alcoholic Beverage Control Commission	95 ABC 0210	Gray	05/01/95	
Legwin Z. Williams v. Alcoholic Beverage Control Commission	95 ABC 0224	Nesnow	05/31/95	10:06 NCR 417
Taleb Abed Rahman v. Alcoholic Beverage Control Commission	95 ABC 0323	Phipps	08/02/95	
Sherrill Douglas Langston v. Alcoholic Beverage Control Commission	95 ABC 0415	Nesnow	08/01/95	10:10 NCR 868
Alcoholic Beverage Control Comm. v. Janice Mac Miles	95 ABC 0434	West	07/20/95	
Imran Ali Hamcerah v. Alcoholic Beverage Control Commission and City of Raleigh	95 ABC 0477	Phipps	07/14/95	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Patrick O. Hawkins v. Office of Administrative Hearings	95 CPS 0361	Phipps	08/01/95	
<i>Crime Victims Compensation Commission</i>				
John Pavlikianidis v. Victims Compensation Commission	94 CPS 0237	Morrison	03/21/95	10:02 NCR 176
Fay, Cynthia, S. Dalton v. Crime Victims Compensation Commission	94 CPS 0445*	West	05/30/95	
Phyllis H. Steinmetz v. Crime Victims Compensation Commission	94 CPS 0542	West	05/16/95	
Hubert Johnson, Edna J. Carter v. Crime Victims Compensation Comm.	94 CPS 1177	Mann	06/12/95	
Wayne L. Utley v. Crime Victims Compensation Commission	94 CPS 1180	Becton	03/07/95	
Sandra H. Hughes v. Victims Compensation Commission	94 CPS 1600	Morrison	06/09/95	
Kristine S. Ray v. Crime Victims Compensation Commission	94 CPS 1673	Chess	04/20/95	
Shirley Moody Myers v. Crime Victims Compensation Commission	94 CPS 1674	Chess	04/20/95	
Thomasine Inman v. Crime Victims Compensation Commission	94 CPS 1731	Nesnow	03/09/95	
Irmgard Gordos v. Crime Victims Compensation Commission	94 CPS 1782	Gray	03/09/95	
Fay, Cynthia, S. Dalton v. Crime Victims Compensation Commission	95 CPS 0010*	West	05/30/95	
Ellen Sherwin v. Crime Vic Comp James Byrum Emp/ Baptist Hosp	95 CPS 0012	West	03/22/95	
Howard B. Peterson v. Crime Victims Compensation Commission	95 CPS 0163	Reilly	07/06/95	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Ella Ruth Jordan v. Gary B. Eichelberger Dir., Crime Vic. Comp. Comm.	95 CPS 0181	West	06/21/95	
Lynn H. Henderson v. CPS, Victims Compensation Commission	95 CPS 0212	Morrison	05/08/95	
Larusha Bey v. Crime Victims Compensation Commission	95 CPS 0245	Reilly	06/02/95	
Percible Gaston v. Crime Victims Compensation Commission	95 CPS 0270	Gray	06/13/95	
Horton Edward v. Crime Victims Compensation Commission	95 CPS 0331	Phipps	07/25/95	
Janet Ring Stevens v. Crime Victims Compensation Commission	95 CPS 0337	Gray	07/21/95	
Juan Aguilar v. Crime Victims Compensation Commission	95 CPS 0356	Reilly	06/22/95	
Mark Edward Altman v. CPS, Crime Victims Compensation Commission	95 CPS 0461	West	07/25/95	
John Kuwalik v. Crime Victims Compensation Commission	95 CPS 0381	Becton	07/10/95	
Sandra Jones v. Crime Victims Compensation Commission	95 CPS 0427	Nesnow	06/02/95	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Concrete Supply Company v. Environment, Health, & Natural Resources	94 EHR 0950	Gray	05/23/95	10:06 NCR 414
Setzer Bros. Inc. v. Environment, Health, and Natural Resources	94 EHR 1676	Nesnow	03/09/95	
Environment, Health, & Natural Resources v. Royal James Cafe	94 EHR 1756	Becton	06/30/95	10:08 NCR 696
John W. VanHoy, Jr. & Adjacent Land Owners v. EHNR and Shugart Enterprises, Inc.	95 EHR 0016	Phipps	03/17/95	
Browning-Ferris Ind. of S. Atlantic, Inc. and Sampson Cty. Disposal, Inc. v. Dept. of Environment, Health, and Natural Resources, and Hoke County and Bladen County	95 EHR 0506	West	06/13/95	
<b>Coastal Resources</b>				
William C. Young v. Coastal Resources Commission and Robert L. Casper, Jr. and Mary M. Casper	95 EHR 0009	Chess	06/13/95	
Howard C. Slack v. Coastal Resources Comm, EHNR	95 EHR 0140	Phipps	03/22/95	10:02 NCR 185
<b>Davidson County Health Department</b>				
John Dee Clodfelter v. Davidson County Health Dept.; EHNR	94 EHR 1037	Chess	03/13/95	
<b>Environmental Health</b>				
EEE-ZZZ Lay Drain Compnay, Inc. v. On-Site Wastewater Section, Division of Environmental Health	94 EHR 0745	Chess	04/24/95	
<b>Environmental Management</b>				
United Screen Printers, Inc. v. EHNR, Div. of Environmental Mgmt.	91 EHR 1179* <sup>5</sup>	West	05/30/95	
Empire Power Co. and George Clark v. EHNR, Div. of Env. Mgmt. and Duke Power Company	92 EHR 0021* <sup>1</sup>	Gray	04/03/95	
Empire Power Co. and George Clark v. EHNR, Div. of Env. Mgmt. and Duke Power Company	92 EHR 0053* <sup>1</sup>	Gray	04/03/95	
United Screen Printers, Inc. v. EHNR, Div. of Environmental Mgmt.	93 EHR 0273* <sup>5</sup>	West	05/30/95	
Kenan Oil Company, Inc. v. EHNR, Div. of Environmental Mgmt.	94 EHR 0894	Nesnow	05/08/95	
Moffitt and Pierce Construction, Inc. v. EHNR, Environmental Mgmt.	94 EHR 1755	West	06/06/95	
<b>Hyde County Health Department</b>				
Fritzner Henry v. Hyde County Health Department	94 EHR 0924	Gray	03/09/95	
<b>Macon County Health Department</b>				
Four Residents on Genva Circle v. Macon County Health Department	94 EHR 1202	Nesnow	03/27/95	
<b>Marine Fisheries</b>				
Chancy Junior Sawyer v. EHNR, Division of Marine Fisheries	94 EHR 1786	Chess	05/22/95	

\* Consolidated cases.



# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Maternal and Child Health</i>				
Jimmy Franklin v. EHNHR Maternal & Child Hlth, Nutrition Services	94 EHR 0288	Gray	05/22/95	
Middleburg Variety v. EHNHR, Maternal & Child Health, Nutrition Svcs.	94 EHR 1601	Chess	05/01/95	
Taisser Shehadch v. EHNHR, Maternal & Child Health, Nutrition Svcs.	94 EHR 1711	Chess	05/02/95	
Philip Haskins v. EHNHR, Div. of Maternal & Child Health	94 EHR 1777	Chess	03/09/95	
<i>New Hanover County Health Department</i>				
Gus Kalogiros v. New Hanover Co. (Health Dept.), Adm & Env. Svcs	94 EHR 1073	Morrison	04/28/95	
<i>Pitt County Public Health Center</i>				
Mary Joyner Dudley v. Pitt County Public Health Center & EHNHR	94 EHR 1043	Gray	06/27/95	
<b>EQUAL EMPLOYMENT OPPORTUNITY</b>				
Marsha Dianne McKoy v. DHR, Div. of MH/DD/SAS, Caswell Center	90 EEO 0379	Chess	04/03/95	
<b>HUMAN RESOURCES</b>				
Helen J. Walls, D/B/A Walls Young World v. Dept. of Human Resources	94 DHR 1362	Becton	03/20/95	
Cecilia Y. Wall, William S. Wall v. Department of Human Resources	94 DHR 1627	Morrison	07/06/95	
Veronica Spearman, John P. Spearman v. Dept. of Human Resources	95 DHR 0216	Reilly	06/02/95	
Sandra Jean Taylor v. Department of Human Resources	95 DHR 0366	Reilly	07/19/95	
<i>Division of Child Development</i>				
Iola Malloy v. DHR, Division of Child Development	94 DHR 0849	Mann	03/03/95	
Willie & Pamela Sturgess v. DHR, Division of Child Development	94 DHR 1631	Reilly	07/10/95	
Esther Elder v. DHR, Division of Child Development	94 DHR 1771	Reilly	03/17/95	
Theresa B. Thomas v. DHR, Division of Child Development	95 DHR 0268	Morrison	07/14/95	
Ellen H. Sams v. DHR, Division of Child Development	95 DHR 0293	Phipps	07/24/95	
Chapel Hill Day Care Center, Nancy Taylor v. DHR, Div. of Child Dev.	95 DHR 0450	Phipps	06/02/95	
<i>Facility Services</i>				
William H. Cooke v. DHR, Division of Facility Services	94 DHR 0565	Gray	03/16/95	
Mildred Reece, Calvin Reece v. DHR, Division of Facility Svcs, Domiciliary & Group Care Section	94 DHR 1783	Gray	03/16/95	
<i>Bingo Licensure Section</i>				
The Regular Veterans Association of the United States and the Sixteen Posts of the Regular Veterans Association of the United States and the Regular Veterans Association Auxiliary Located in the State of North Carolina v. DHR, Division of Facility Services, Bingo Licensure Section	95 DHR 0040	Morrison	04/13/95	
<i>Certificate of Need Section</i>				
The Carrolton of Fayetteville, Inc. and Highland House of Fayetteville, Inc. and Richard Allen, Sr. v. DHR, Division of Facility Services, Certificate of Need Section and Pine Manor Rest Home, Inc., d/b/a Pine Manor Health Care	94 DHR 0197*2	Reilly	04/05/95	
The Carrolton of Fayetteville, Inc. and Highland House of Fayetteville, Inc. and Richard Allen, Sr. v. DHR, Division of Facility Services, Certificate of Need Section and Pine Manor Rest Home, Inc., d/b/a Pine Manor Health Care	94 DHR 0198*2	Reilly	04/05/95	
Retirement Villages, Inc. (Lessor), and Liberty Healthcare Ltd. Partnership (Lessee) D/B/A Countryside Villa of Duplin v. DHR, Division of Facility Services, Certificate of Need Section and Beaver Properties/Wallace, Inc., and Brian Center Health & Retirement/ Wallace, Inc.	94 DHR 0403	Chess	12/14/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Office of Emergency Medical Services</i>				
Charles M. Erwin v. DHR, Facility Svcs, Off. of Emgcy. Medical Svcs.	92 DHR 1697	Chess	05/16/95	10:06 NCR 409
<i>Division of Medical Assistance</i>				
A.S., by and through her agent and personal representative, Hank Neal v. DHR, Division of Medical Assistance	93 DHR 1736	Reilly	05/22/95	
D.A., by and through his agent and personal representative, Hank Neal v. DHR, Division of Medical Assistance	93 DHR 1737	Reilly	05/22/95	
<i>Division of Social Services</i>				
<i>Child Support Enforcement Section</i>				
Daniel J. Carter v. Department of Human Resources	91 CSE 1103	Morrison	03/03/95	
Shawn Dominic Caldwell v. Department of Human Resources	92 CSE 1449	Reilly	03/29/95	
William Zonta Thompson v. Department of Human Resources	92 CSE 1559	Reilly	03/29/95	
Jackie E. Hackney v. Department of Human Resources	93 CSE 1088	Chess	03/20/95	
Lenzo Davis v. Department of Human Resources	93 CSE 1111	Becton	07/12/95	
Frank M. Swett v. Department of Human Resources	93 CSE 1123*3	Reilly	05/16/95	
Elbert Quick v. Department of Human Resources	93 CSE 1169	Chess	03/08/95	
Dennis E. Barkley v. Department of Human Resources	93 CSE 1187	Reilly	06/30/95	
Clement McMillan v. Department of Human Resources	93 CSE 1208	Chess	03/08/95	
Larry James Walker Jr. v. Department of Human Resources	93 CSE 1255	Morrison	06/12/95	
James R. Gray v. Department of Human Resources	93 CSE 1268	Chess	03/08/95	
Manuel F. Isla v. Department of Human Resources	93 CSE 1270*10	Becton	07/28/95	
John D. Bird v. Department of Human Resources	93 CSE 1272	Gray	06/26/95	
Lacy Green, Jr. v. Department of Human Resources	93 CSE 1295	Chess	03/08/95	
Leon McNair v. Department of Human Resources	93 CSE 1317	Becton	04/04/95	
Edwin A. Clarke v. Department of Human Resources	93 CSE 1319	Chess	03/08/95	
Wolfgang R. Walker v. Department of Human Resources	93 CSE 1374	Gray	04/28/95	
Wyatt Roseboro v. Department of Human Resources	93 CSE 1423	Becton	04/25/95	
Lloyd Lane Speake v. Department of Human Resources	93 CSE 1451	Chess	03/22/95	
Raymond E. Dresser v. Department of Human Resources	93 CSE 1459	Reilly	06/23/95	
Terry L. Yoder v. Department of Human Resources	93 CSE 1498	Nesnow	06/02/95	
Ronald E. Lewis v. Department of Human Resources	93 CSE 1508	Mann	05/18/95	
Richard L. Hiott v. Department of Human Resources	93 CSE 1509	Mann	04/21/95	
Cecil Ray Hinshaw v. Department of Human Resources	93 CSE 1513	Gray	05/08/95	
Terry C. Brown v. Department of Human Resources	93 CSE 1516	Morrison	05/08/95	
Paul R. Johnson v. Department of Human Resources	93 CSE 1546	Gray	06/27/95	
Henry C. Banks v. Department of Human Resources	93 CSE 1556	Chess	03/22/95	
Lucille B. Dutter v. Department of Human Resources	93 CSE 1558	Chess	03/13/95	
Charles Bascom Kiker v. Department of Human Resources	93 CSE 1561	Mann	04/21/95	
Mandel Curry Edwards v. Department of Human Resources	93 CSE 1566*6	Gray	05/31/95	
Tony M. Tart v. Department of Human Resources	93 CSE 1588	Becton	06/08/95	
Wade E. Hampton v. Department of Human Resources	93 CSE 1593	Chess	04/20/95	
Cecedrick Scott v. Department of Human Resources	93 CSE 1651	Chess	07/20/95	
Gary Jay Stocks v. Department of Human Resources	93 CSE 1652	Chess	03/21/95	
Paul E. Strawcutter v. Department of Human Resources	93 CSE 1713	Mann	03/13/95	
John L. Osborne (Jr.) v. Department of Human Resources	94 CSE 0140	Mann	05/30/95	
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Robert G. Baker v. Department of Human Resources	94 CSE 1094	Chess	03/06/95	
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Ruby Fewell Henry v. Department of Human Resources	94 CSE 1157	Nesnow	03/16/95	
Michael Leon McCain v. Department of Human Resources	94 CSE 1158	Becton	05/16/95	
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*Wake County Social Services*

Grace A. Wright v. Wake County Social Services., Suzanne Woodell and Craig Glenn	94 DHR 1618	Chess	05/03/95
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James W. Hughes v. Department of Correction, Blue Ridge Unit Avery	95 OSP 0334	Becton	07/25/95	
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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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<i>Gaston County Department of Social Services</i>				
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<i>Lee-Harnett Area Mental Health, Developmental Disabilities, and Substance Abuse Authority</i>				
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**CONTESTED CASE DECISIONS**

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Mark Morgan v. Wake County	94 OSP 0937	Nesnow	04/28/95	10:04 NCR 287
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Wayne La Broad v. Bd./Trustees//Teachers/St. Emp. Retirement Sys.	95 DST 0219	Morrison	07/14/95	
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STATE OF NORTH CAROLINA

COUNTY OF WAYNE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
95 ABC 0415

SHERRILL DOUGLAS LANGSTON,  
Petitioner,

v.

ALCOHOLIC BEVERAGE CONTROL  
COMMISSION,  
Respondent.

RECOMMENDED DECISION

This matter was heard before Administrative Law Judge Dolores O. Nesnow, on July 20, 1995, in New Bern, North Carolina.

APPEARANCES

Petitioner: Sherrill Douglas Langston,  
Appeared *Pro Se*

Respondent: Fred A. Gregory  
Assistant Counsel  
N.C. ABC Commission  
Attorney for Respondent

ISSUE

Should the Respondent issue to the Petitioner an On-Premises Beer Permit over local government objection?

STATUTES AND RULES IN ISSUE

N. C. Gen. Stat. 18B-901

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. Respondent Alcoholic Beverage Control (ABC) Commission received an application for an on-premises beer permit on February 1, 1995 from the Petitioner.
2. Petitioner's establishment was to be called "Players" and was to be located in downtown Goldsboro.
3. Petitioner had applied to the Town of Goldsboro for a Special Use Permit to operate a non-alcoholic teen club. His application was denied. Petitioner then applied for a Special Use Permit to operate a place of entertainment with Alcohol. That application was also denied.
4. Respondent conducted a background investigation and found the premises and the applicant suitable to hold an ABC permit.
5. In accordance with procedure, Respondent forwarded the "001" (double-O-one) Form to the local government, which in this case was the Planning and Community Development Office in Goldsboro, North Carolina.
6. Donnie R. Chatman, the Director of Planning and Community Development for Goldsboro, has been designated as the local government representative for receiving the 001 Form.



7. The Double-O-one Form was completed by Mr. Chatman's office in accordance with the Goldsboro local government which objected to the permit based upon local zoning.

8. N.C. Gen. Stat. 18B-901(a) provides that all ABC permits shall be issued by the (ABC) Commission.

9. N.C. Gen. Stat. 18B-901(d) provides that the Commission shall have the "sole power, in its discretion," to determine the suitability and qualifications of an applicant for a permit.

10. N. C. Gen. Stat. 18B-901 provides in pertinent part the following:

Before issuing a permit...the Commission may consider...the zoning laws.

11. Mr. Chatman testified that Players is a "place of entertainment" and can not be located in the Central Business District (CBD) without a Special Use Permit.

12. The pertinent section of the Goldsboro zoning regulations provides that commercial clubs, cabarets, taverns, and places of entertainment, may not be located in the CBD if they are within 500 feet of a residence, church, or school. Additionally, no such establishment may be located within 300 feet of any other similar establishment.

13. The location of Players is 420 feet from a residence to the north, 235 feet from a residence to the northeast, 180 feet from a residence to the east, and 175 feet from a residence to the southwest.

14. Players is 420 feet from a church to the southwest and there is another ABC location 250 feet to the southeast.

15. In comparison, N.C. Gen. Stat. 18B-901(c)(5) provides that the ABC Commission may take into consideration whether an establishment is within 50 feet of a church or school.

16. Mr. Chatman also testified that there are some ABC locations in the Central Business District which were grandfathered in at the time the zoning laws were passed.

17. Petitioner testified that not a single place of entertainment has been approved by the Town of Goldsboro since the zoning laws were passed. Mr. Chatman testified that the zoning laws were passed in response to a problem in the CBD where numerous bars had operated, causing noise, traffic problems and other undesirable impacts on the CBD.

18. Mr. Chatman also testified that restaurants with ABC permits have been opened in the CBD because, as a restaurant, they are not considered places of entertainment.

Based upon the above Findings of Fact, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. The location of the Petitioner's establishment clearly falls outside of the allowed distances as they are enumerated in the present zoning laws of Goldsboro.

2. N. C. Gen. Stat. 18B-901 provides that the ABC Commission may consider the local zoning ordinances in making its decision whether or not to grant an ABC permit.

A similar situation arose in the case of the Application of Melkonian, 355 S.E. 2d, 85 N.C. App 351 (1987). In that case, Melkonian applied for an on-premises beer permit from the ABC Commission and for a Special Exception Use Permit from the Town of Havelock. After the Town of Havelock denied the SEU permit, the ABC Commission denied the ABC permit because of the local government objection.

Melkonian appealed the ABC Commission's denial and, after a hearing, the Commission issued the permit.

The City of Havelock appealed to Superior Court which ordered the City of Havelock to issue the SEU permit,

finding that Melkonian was entitled to that permit since the ABC Commission had granted him the ABC permit.

The North Carolina Court of Appeals upheld the trial court's finding that local ordinances are preempted by State law when those ordinances are not consistent with State law. An ordinance is not consistent with State law when:

- a. The ordinance makes unlawful an act which is lawful under State law,
- b. The ordinance makes lawful an act which is unlawful under State law,
- c. The ordinance regulates a subject the municipality is forbidden to regulate under State law, or
- d. The ordinance regulates a subject which State law clearly and completely regulates.

The Court of Appeals found that G. S. 18B-100 indicated that, "Except as provided in this Chapter, local ordinances establishing different rules on the ...sale...or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited."

The Court found that the General Assembly clearly intended to delegate regulation of alcoholic beverages to the ABC Commission and, further, provided for the procedure for issuance of permits in G.S. 18B-901.

G.S. 18B-901, the Court noted, provides that The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit.

The question in the case sub judice is whether or not the City of Goldsboro is attempting to regulate the sale of alcoholic beverages through the enactment of its current zoning laws. A review of the statute and the ordinance at issue show that the State Statute requires 50 feet as the desirable distance from a church or school. The ordinance requires 500 feet from a church or residence and 300 feet from another bar.

The Respondent argues that since Goldsboro has permitted both restaurants and convenience stores to operate in the CBD with an ABC permit, Goldsboro is not regulating the sale of alcohol but is, rather, regulating "places of entertainment." In fact, the City denied Petitioner's initial application for a teen club permit which did not involve the sale of alcohol.

The Respondent ABC Commission argues that it is not their intent to challenge local zoning laws where those zoning laws regulate something other than the sale of alcohol.

The City argues that since it allows restaurants and convenience stores, it has shown that it is not attempting to regulate the sale of alcohol but only "places of entertainment."

If Goldsboro's zoning ordinance directly or indirectly regulates the sale of alcoholic beverages, that ordinance, as in Melkonian, would be in conflict with State law and the delegation of that regulation from the General Assembly to the ABC Commission.

Since the City of Goldsboro's CBD has numerous churches, there is in effect no location in the CBD which would be more than 500 feet from a church. This ordinance, therefore, has effectively shut out the possibility of a bar opening in the CBD.

While it is uncontested that Goldsboro allows convenience stores and restaurants, the City does not allow bars (or places of entertainment). Therefore, the City is not regulating all alcohol establishments, but only some alcohol establishment.

While Goldsboro may be very well intentioned in its regulation of bars in the CBD, it has not registered an objection to the Commission based on there being too many bars and too much traffic, noise, etc. It has effectively provided zoning laws which will keep bars out of the CBD without having to confer with the ABC Commission. It has, thus, regulated the sale of alcohol in a bar in the CBD of Goldsboro.

3. Without attempting to rule on Goldsboro's zoning law, it is the undersigned's opinion that the Respondent has considered the local zoning ordinances as it may do by statute.

Having considered those ordinances, it is concluded that the Respondent ABC Commission should have issued the on-premises beer permit to the Petitioner.

Based upon the above Conclusions of Law, the undersigned makes the following:

**RECOMMENDATION**

That the Respondent issue the on-premises beer permit for which the Petitioner applied.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the N.C. ABC Commission.

This the 1st day of August, 1995.

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Dolores O. Nesnow  
Administrative Law Judge



STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
95 DST 0404

**TAMMY EVONNE ASHCROFT BROWN,**  
**Petitioner,**

V.

**BOARD OF TRUSTEES OF THE  
LOCAL GOVERNMENTAL EMPLOYEES'  
RETIREMENT SYSTEM,  
Respondent.**

**RECOMMENDED DECISION**  
**ORDER GRANTING MOTION**  
**FOR SUMMARY JUDGMENT**

**THIS MATTER** came on to be heard by the undersigned administrative law judge upon Respondent's Motion to Dismiss the Petitioner's petition for contested case hearing pursuant to G.S. 1A-1, Rules 12(b)(1), (2), (4), (5), and (6) of the North Carolina Rules of Civil Procedure; in the alternative, Respondent moves for summary judgment pursuant to G.S. 1A-1, Rule 56 of the North Carolina Rules of Civil Procedure. The Petitioner filed a response also moving for summary judgment. The caption of this proceeding is amended *ex mero motu* to reflect the proper name of the Respondent.

## APPEARANCES

Petitioner: *Pro Se.*

Respondent: Robert M. Curran  
Assistant Attorney General  
N.C. Department of Justice  
P. O. Box 629  
Raleigh, NC 27602-0629

## ISSUES

1. Should the petition for contested case hearing ("petition") be dismissed for lack of subject matter jurisdiction pursuant to G.S. 1A-1, Rule 12(b)(1)?
2. Should the petition be dismissed for lack of jurisdiction over the person pursuant to G.S. 1A-1, Rule 12(b)(2)?
3. Should the petition be dismissed for insufficiency of process pursuant to G.S. 1A-1, Rule 12(b)(4)?
4. Should the petition be dismissed for insufficiency of service of process pursuant to G.S. 1A-1, Rule 12(b)(5)?
5. Should the petition be dismissed for failure to state a claim upon which relief can be granted pursuant to G.S. 1A-1, Rule 12(b)(6)?
6. Is the Petitioner entitled to a return of contributions from the Local Governmental Employees' Retirement System as a beneficiary of Stanley T. Brown, deceased member?

After consideration of the pleadings, the law and the written submissions of the parties, the undersigned finds the following:

### UNCONTROVERTED FACTS

1. The Petitioner was married to Stanley T. Brown who was a member of the Local Governmental Employees' Retirement System until his death on Sunday, October 23, 1994. He was 30 years old at the time of his death.

2. On Thursday, October 20, 1994, Mr. Brown signed a Change of Beneficiary Form changing the beneficiary for his Return of Contributions to his wife. The Petitioner states that the form was notarized by an employee from the personnel office of the City of Charlotte with whom the member was employed. The form is properly notarized.

3. The Petitioner mailed the Change of Beneficiary Form by overnight mail to the Respondent agency; however, it was not received and filed by the Respondent until Monday, October 24, 1994.

4. On January 20, 1995, the Respondent advised the Petitioner that she was the designated beneficiary of the Return of Contributions and requested that she provide the office with a certified death certificate.

5. On February 10, 1995, the Respondent notified the Petitioner that it had made a mistake in stating she was the beneficiary because the Change of Beneficiary Form was received after the date of the death of the member.

6. On February 16, 1995, after further inquiry by the Petitioner, through counsel, the Respondent notified the Petitioner again and restated its final position to be that, although the Change of Beneficiary Form was duly acknowledged, it was not filed with the Board of Trustees at the time of Mr. Brown's death.

7. In the February 16, 1995 letter, the Respondent further stated:

This is our final agency decision in this matter. Should Ms. Tammy Brown be aggrieved by this decision and desire to appeal, a petition for a contested case hearing should be filed with the Office of Administrative Hearings within sixty (60) days of the date of this letter. You or Ms. Brown should contact the Office of Administrative Hearings at Post Office Drawer 27447, Raleigh, North Carolina 27611-7447 for the proper filing procedures.

8. On April 1, 1995, the Petitioner who was representing herself mailed a detailed handwritten letter to "J. Marshall Barnes III, Office of Administrative Hearings, P.O. Box 27447, Raleigh, NC 27611-7447" and she asked that the letter stand as a petition for an appeal.

9. On April 10, 1995, the Deputy Clerk of the Office of Administrative Hearings wrote a letter to the Petitioner stating that the Clerk's office received the letter on April 5, 1995 but could not determine whether or not the letter constituted a petition. A Form H-06, "Petition For A Contested Case Hearing," with instructions for the Form H-06 Petition and the Certificate of Service were mailed to Petitioner by the Deputy Clerk.

10. The instructions provided by the Clerk's Office of the Office of Administrative Hearings ("OAH") for the completion of the certificate of service on the Form H-06 state the following:

You must mail or deliver a copy of your completed petition to the state agency involved and complete the certificate of service section on your petition, entering the name of the person to whom you mailed or delivered the petition on line (11), the name of the state agency involved on line (12), the address of the state agency on line (13), the date on line (14) and sign your name on line (15).

11. On April 17, 1995, the Petitioner filed a completed Form H-06 Petition for A Contested Case Hearing and attached to the petition copies of the letters referred to in the preceding findings of fact. The petition was filed and accepted by OAH.

12. As shown on the Form H-06 Petition filed by the Petitioner, lines 11-13 are filled out in the following manner: "Served on (11) J. Marshall Barnes III (12) Office of Administrative Hearings (13) Post Office Drawer 27447 Raleigh NC 27611-7447." The petition is signed and dated.

13. No registered agent is listed in the Respondent's rules as a designated person to receive service of process. Under the Retirement Systems Divisional Rules, the rule-making procedures provides an address for correspondence

regarding rule-making; however, there is no address under contested case procedures. 20 NCAC 2A .0201 & 2A .0400; 20 NCAC 1F .0300.

14. J. Marshall Barnes, III is the Deputy Director of the Retirement Systems Division of the Department of State Treasurer. His address is 325 North Salisbury Street, Raleigh, NC 27603-1385.

15. On April 27, 1995, the Chief Hearings Clerk of the Office of Administrative Hearings notified the Respondent by Notice of Contested Case and Assignment that a petition for a contested case hearing had been filed and accepted.

16. The Notice of Contested Case and Assignment was mailed to the counsel for the Respondent, Robert M. Curran, Associate Attorney General, on April 27, 1995. Official notice is taken pursuant to G.S. 150B-30 and 26 NCAC 3 .0121(5) of the fact that the N.C. Department of Justice ("Attorney General's Office") notified the Chief Hearings Clerk of the Office of Administrative Hearings by letter filed December 21, 1994 that all Notices of Contested Case and Assignment, Orders for Prehearing Statements, or related documents involving the Respondent agency were to be sent directly to Robert M. Curran who was to assume primary responsibility for this agency in the Office of Administrative Hearings.

17. On May 30, 1995, the Respondent filed a Motion to Dismiss Or, In the Alternative, Motion for Summary Judgment based upon Rule 12(b) procedural grounds or for any lawful reason or ground which may pertain to this appeal. Petitioner responded on June 12, 1995 and also moved for summary judgment.

Based upon the foregoing Uncontroverted Facts, the undersigned makes the following:

### CONCLUSIONS OF LAW

#### **I. RULE 12(B)(6) MOTION CONVERTED TO SUMMARY JUDGMENT**

Respondent's motion for dismissal based upon a failure to state a claim is converted into a motion for summary judgment pursuant to G.S. 1A-1, Rule 12(b). There are no genuine issues of material fact and therefore, summary judgment is proper.

#### **II. SUBJECT MATTER JURISDICTION: Rule 12(b)(1)**

The Office of Administrative Hearings has subject matter jurisdiction over this contested case. The Respondent agency is not exempt from the Administrative Procedures Act, Chapter 150B of the North Carolina General Statutes. G.S. 150B-1(e). Respondent's own rules require that contested cases involving the Department of State Treasurer shall be held in accordance with G.S. 150B. 20 NCAC 1F .0301; 20 NCAC 2A .0103. The aggrieved person may try to informally resolve a complaint with the appropriate persons within the agency. 20 NCAC 2A .0401. In this case, after failing to informally resolve her complaint, the Petitioner properly filed her petition. Petitioner is an "aggrieved person" in that she has commenced this contested case to resolve a dispute she has with the Respondent agency over whether or not she has been erroneously denied her husband's Return of Contributions pursuant to G.S. 128-27(f). G.S. 150B-2(6); G.S. 150B-22.

#### **III. SUFFICIENCY OF PROCESS: Rule 12(b)(4)**

Pursuant to G.S. 150B-23(a), a petitioner is required to file a certificate of service with the petition. Petitioner has properly filed a certificate of service with the Office of Administrative Hearings and therefore, has sufficiently completed the process anticipated by G.S. 1A-1, Rule 12(b)(4) and G.S. 150B-23(a).

#### **IV. SUFFICIENCY OF SERVICE OF PROCESS: Rule 12(b)(5) and ADEQUACY OF NOTICE OF PROCEDURE: G.S. 150B-23(f)**

Pursuant to G.S. 150B-23(a), a petitioner is required to serve a copy of the petition on all parties. Pursuant to G.S. 1A-1, Rule 4(j)(4), service of process on a state agency in order to assert grounds for personal jurisdiction requires serving the process agent appointed by the agency. The name of the process agent must be filed with the Attorney General's Office. If no process agent is designated, then service upon the agency is made by serving the Attorney General's Office. Petitioner



has insufficiently "served" the Respondent as anticipated by G.S. 1A-1, Rule 12(b)(5) and G.S. 150B-23(a) in that she did not mail a copy of her petition to the proper address for the Respondent agency.

However, the agency decision letter dated February 16, 1995 does not provide an instruction to the Petitioner regarding on whom she is to serve a petition; it only advises her to contact OAH for filing procedures. G.S. 150B-23(f) states that when notice is given of an agency decision, the notice "shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition." (Emphasis added.)

The Petitioner should not have to "take the bitter with the sweet." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985), on remand 651 F.Supp. 92 (N.D. Ohio 1986), judgment affirmed 844 F.2d 304 (6th Cir. 1988), cert. denied 488 U.S. 946, 109 S.Ct. 377, 102 L.Ed.2d 365 (1988) (rejecting Arnett v. Kennedy, 416 U.S. 134, 154, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974), rehearing denied, 417 U.S. 977, 94 S.Ct. 3187, 41 L.Ed.2d 1148 (1974)). In other words, if she is given the opportunity for a hearing, the Petitioner should not be harmed by the procedure.

The process due under the Constitution is a flexible concept. No single model of procedural fairness, let alone particular form of procedure, is dictated by the due process clause. "[T]he Constitution does require procedure at that level which is appropriate to the nature of the case." And it allows the procedures to be tailored to fit the realities of the situation. "The process that is due varies according to the nature of the right and to the type of proceeding."

Therefore, the fundamental fairness of a particular procedure does not turn on the result obtained in any individual case but the risk of error inherent in the process as applied to the generality of cases. The due process clause cannot mandate an error-free decision-making process.

The fact that a procedure is followed in many similar processes is not conclusive but it is worth considering.

Koch and Wright, Administrative Law and Practice Sec. 7.22[1] (Supp. 1995) (citations omitted).

Most opinions addressing the procedures necessary to protect a specific interest apply the three part balancing test of Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). That test requires that the private interest be weighed against the probable value or burden of additional procedure and the government's interest. Id. at 335. See also, Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986) (After applying the balancing test, the court recognized the subjectivity that goes into this analysis; however, the law of the land analysis under the North Carolina Constitution "does not afford less procedural protection than that afforded by due process." Id. at 495, fn. 5).

In this case, the Petitioner potentially suffers a substantial loss of her husband's contributions to the retirement system. The Respondent has no loss in this situation because it is merely the holder of those funds.

Also the Petitioner's interest in having a fair opportunity to be heard regarding her dispute with the agency, i.e., to "have her day in court," should not be outweighed by the government's interest in disposing of or finalizing disputes with private citizens by procedural dismissals. There "is an appreciable risk, if not a substantial risk, of an erroneous deprivation" of Petitioner's right to appeal if she is not informed on whom she must serve the petition. Supra at 485. "Adequate notice" means that the person must be adequately informed of their procedural rights and how to exercise them. Koch and Wright, Administrative Law and Practice, Sec. 5.3-1 6-1 (Supp. 1995) (citations omitted).

The burden of additional procedure to the government is minimal when all that is necessary is for the agency to add a sentence to its final agency decision document which provides the name and address of the person designated within the agency on whom the petition is to be served. Other agencies routinely do this. Thus the notice provided to the Petitioner must be strictly scrutinized in order to assure a fair opportunity for a hearing.

In conclusion on this issue, the petition should not be dismissed pursuant to G.S. 1A-1, Rule 12(b)(5) for insufficiency of service of process because, although the Respondent gave the Petitioner an opportunity for a hearing regarding this dispute, it did not provide adequate notice of the minimum procedural requirements in order to perfect her appeal as required by G.S. 150B-23(f).

#### V. PERSONAL JURISDICTION: Rule 12(b)(2)

"Bringing parties into court by process is not the only way courts acquire jurisdiction over them." Blackwell v. Massey, 69 N.C.App. 240, 316 S.E.2d 350 (1984) (discussing the concept of "general appearance" pursuant to G.S. 1-75.7(1)). Within ten days after a petition is filed, the Chief Hearings Clerk at OAH is required to notify the respondent state agency that a petition for a contested case hearing has been filed and accepted. 26 NCAC 3 .0103(b). Although the issuance of a civil summons which is used in district and superior courts is not procedurally required by OAH, the similarities between a civil summons and the Notice of Contested Case Filing and Assignment must be noted.

A civil summons is issued in the name of the State and signed by the clerk of the court. It gives the name of the case and the name of the county and the court where the action is commenced; it notifies the defendant in the action to appear in court within 30 days. G.S. 1A-1, Rule 4(b). The summons is served by the Sheriff's department or someone duly authorized to serve and a copy of the complaint is served with the summons. G.S. 1A-1, Rule 4(a). Proof of service is required. G.S. 1A-1, Rule 4(j2).

A Notice of Contested Case and Assignment is a document issued by the Clerk's Office at OAH and is signed by the clerk. It contains the caption of the case, date of filing, the assigned judge, and a request that the party send within 30 days a copy of the document constituting agency action. 26 NCAC 3 .0103(b). Noticeable distinctions are that a copy of the petition is not served with the notice and proof of service is not required. The primary similarity is that both the civil summons and the Notice of Contested Case notify the named defendant or respondent that an action has been commenced against it.

Because the Respondent agency has no rule designating a process agent for service of process of civil actions or of contested cases, because the Attorney General's Office has notified OAH that Robert M. Curran is designated as the Respondent's agent for service of the Notice of Contested Case and other related documents, and because the Respondent's agent has been served with the Notice of Contested Case, it is concluded that the Office of Administrative Hearings has personal jurisdiction over the Respondent agency.

## **VI. SUMMARY JUDGMENT: Rule 56**

G.S. 128-27(f) states that:

"Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, . . . the amount of his accumulated contributions at the time of his death. . . .

A clear reading of this provision indicates that the Board shall pay to the beneficiary designated on the filed beneficiary form the accumulated contributions upon receipt of proof of the death. No monies are to be paid out until the Board receives a satisfactory proof of death; then the monies are to be paid to whomever is designated on the filed form. This statutory language does not state that a written form designating a beneficiary must be filed with the Board of Trustees prior to the time of the member's death; however, the Respondent has so interpreted this provision. See, Stewart v. Bd. of Trustees of the Teachers' and State Employees' Retirement System, 94 DST 0045 (1994) (final agency decision rejects part of recommended decision interpreting similar statute).

Prior to retirement, a member of the Local Governmental Employees' Retirement System has the right at any time to change any beneficiaries designated. "Any such change must be submitted to the board of trustees, using the appropriate form." 20 NCAC 2C .0306. The Respondent's rules do not require that the change in beneficiary form be filed prior to the time of death.

In this case, the deceased member prior to his death and prior to his retirement properly nominated and duly acknowledged, on the appropriate form, a change of beneficiary for his return of retirement contributions. The Change of Beneficiary form was received by the Respondent the day following the date of death and prior to the receipt of proof of death. The receipt of the change of beneficiary form was not invalid because the member died after the form was completed and mailed but before it was filed.

G.S. 128-28(g) provides: "The Board of Trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this Chapter." Thus,

the Board has the inherent authority to honor the clear intent of deceased member, Stanley T. Brown, to leave his contributions to his wife.

A common sense approach should be considered in this case as was done in Puerto Rico Sun Oil v. EPA, 8 F.3d 73, 77 (1st Cir. 1993):

Agencies . . . are normally entitled to substantial deference so long as their decisions do not collide directly with substantive statutory commands and so long as procedural corners are squarely turned. This deference is especially marked in technical areas. But in the end an agency decision must also be rational - technically speaking, it must not be "arbitrary or capricious," . . . The requirement is not very hard to meet, but it has not been met here.

The Respondent acted erroneously and capriciously, thus depriving the Petitioner of her husband's return of contributions as required by G.S. 128-27(f).

Based upon the foregoing Uncontroverted Findings of Fact and Conclusions of Law, the undersigned makes the following:

#### **RECOMMENDED DECISION**

It is recommended that the Respondent's Motion to Dismiss and in the Alternative, Motion for Summary Judgment be and is hereby **DENIED**. It is recommended that the Petitioner's Motion for Summary Judgment be and is hereby **GRANTED**. **FURTHER**, it is recommended that the Respondent pay deceased member, Stanley T. Brown's accumulated retirement contributions to the Petitioner as his properly designated beneficiary. **FURTHER**, it is recommended that the Board of Trustees consider drafting a rule or rules to address this issue pursuant to G.S. 128-28(g).

#### **ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with G.S. 150B-36(b).

#### **NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a). The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the Board of Trustees of the Local Governmental Employees' Retirement System.

This the 27th day of July, 1995.

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Meg Scott Phipps  
Administrative Law Judge



*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

**TITLE      DEPARTMENT      LICENSING BOARDS      CHAPTER**

1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
		Mortuary Science	34
*21	Occupational Licensing Boards	Nursing	36
22	Administrative Procedures	Nursing Home Administrators	37
23	Community Colleges	Occupational Therapists	38
24	Independent Agencies	Opticians	40
25	State Personnel	Optometry	42
26	Administrative Hearings	Osteopathic Examination & Reg. (Repealed)	44
27	NC State Bar	Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
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**Note:** Title 21 contains the chapters of the various occupational licensing boards.

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ACUPUNCTURE LICENSING BOARD						
21 NCAC 01 .0101	10:02 NCR 150	07/01/95			08/01/95	
.0201	10:07 NCR 585	10/01/95				
.0401 - .0402	10:02 NCR 150	07/01/95			08/01/95	
.0501	10:07 NCR 585	10/01/95				
.0701	10:07 NCR 585	10/01/95				
AGRICULTURE						
2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
ARCHITECTURE						
21 NCAC 02 .0301 - .0302	10:10 NCR 829	07/01/96				
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21 NCAC 08F .0105	10:04 NCR 255	08/01/95			08/01/95	
.0113	10:04 NCR 255	08/01/95			08/01/95	
08G .0401	10:04 NCR 255	08/01/95			08/01/95	
08J .0005	10:04 NCR 255	08/01/95			08/01/95	
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.0104	10:04 NCR 255	08/01/95			08/01/95	
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.0202	10:01 NCR 13					Correction to Notice
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.0308 - .0310	10:08 NCR 661	11/01/95				
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			State	Local		
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	.0531	10:01 NCR 13	x	x	07/01/95	
	.0902	10:01 NCR 13	x	x	07/01/95	
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	.0317	10:01 NCR 26			07/01/95	
Wildlife Proclamation/Striped Bass		10:02 NCR 57				
		10:03 NCR 195				
13B	.0101	10:06 NCR 350				
	.0103	10:06 NCR 350				
	.0503	10:06 NCR 350				
	.0802 - 0829	10:06 NCR 350				
	.1627	10:06 NCR 350				
16A	.1001	10:07 NCR 582	x			
	.1002 - .1006	10:07 NCR 582				
18A	.2508	10:06 NCR 350				
	.2511	10:06 NCR 350				
	.2516 - .2519	10:06 NCR 350				
	.2521 - .2524	10:06 NCR 350				
	.2526	10:06 NCR 350				
	.2528 - .2535	10:06 NCR 350				
	.2537	10:06 NCR 350				
	.2540 - .2543	10:06 NCR 350				
19A	.0401	10:06 NCR 350				
	.0406	10:06 NCR 350				



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	.0502	10:06 NCR 350	10/01/95		
19C	.0206	10:05 NCR 305	10/01/95	x	
19H	.0702	10:07 NCR 582	10/01/95	x	
24A	.0404	10:06 NCR 350	10/01/95	x	

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Voting Rights Act	10:01 NCR 02
	10:03 NCR 194
	10:05 NCR 298
	10:10 NCR 825

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Number 72	10:01 NCR 01	03/06/95
Number 73	10:02 NCR 54	03/15/95
Number 74	10:02 NCR 54	03/27/95
Number 75	10:03 NCR 191	03/30/95
Number 76	10:03 NCR 191	04/03/95
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Number 78	10:06 NCR 336	05/23/95
Number 79	10:07 NCR 427	06/07/95
Number 80	10:07 NCR 427	06/13/95
Number 81	10:08 NCR 639	06/27/95
Number 82	10:10 NCR 823	07/27/95
Number 83	10:10 NCR 823	08/03/95

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10 NCAC 03D .1401	10:08 NCR 641	11/01/95
03H .0108 - .0109	10:02 NCR 58	09/01/95
.0206 - .0220	10:02 NCR 58	09/01/95
.0306 - .0318	10:02 NCR 58	09/01/95
.0407 - .0409	10:02 NCR 58	09/01/95
.0505 - .0507	10:02 NCR 58	09/01/95
.0510 - .0517	10:02 NCR 58	09/01/95
.0605 - .0609	10:02 NCR 58	09/01/95
.0705 - .0712	10:02 NCR 58	09/01/95
.0810 - .0812	10:02 NCR 58	09/01/95
.0903 - .0911	10:02 NCR 58	09/01/95
.1003 - .1008	10:02 NCR 58	09/01/95
.1105 - .1109	10:02 NCR 58	09/01/95
.1130 - .1136	10:02 NCR 58	09/01/95
.1150 - .1163	10:02 NCR 58	09/01/95
.1204 - .1208	10:02 NCR 58	09/01/95
.1210	10:02 NCR 58	09/01/95
.1306 - .1308	10:02 NCR 58	09/01/95
.1405 - .1406	10:02 NCR 58	09/01/95
.1408 - .1410	10:02 NCR 58	09/01/95
.1501 - .1503	10:02 NCR 58	09/01/95
.1612 - .1613	10:02 NCR 58	09/01/95
.1703 - .1704	10:02 NCR 58	09/01/95
.1804 - .1807	10:02 NCR 58	09/01/95
.2001	10:02 NCR 58	09/01/95
.2101 - .2110	10:02 NCR 58	09/01/95
.2201 - .2212	10:02 NCR 58	09/01/95
.2301 - .2308	10:02 NCR 58	09/01/95
.2401 - .2402	10:02 NCR 58	09/01/95
.2501 - .2506	10:02 NCR 58	09/01/95
.2601 - .2607	10:02 NCR 58	09/01/95
.2701	10:02 NCR 58	09/01/95
.2801 - .2802	10:02 NCR 58	09/01/95
.2901 - .2902	10:02 NCR 58	09/01/95
.3001 - .3005	10:02 NCR 58	09/01/95
.3011 - .3016	10:02 NCR 58	09/01/95
.3021 - .3032	10:02 NCR 58	09/01/95

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	.3301 - .3302	10:02 NCR 58			09/01/95	
	.3401 - .3404	10:02 NCR 58			09/01/95	
03L	.0901 - .0907	10:08 NCR 641			02/01/96	
	.1001 - .1007	10:08 NCR 641			02/01/96	
	.1101 - .1112	10:08 NCR 641			02/01/96	
	.1201 - .1202	10:08 NCR 641			02/01/96	
	.1301 - .1303	10:08 NCR 641			02/01/96	
	.1401 - .1402	10:08 NCR 641			02/01/96	
03M	.0202 - .0205	10:08 NCR 641			02/01/96	
	.0207	10:08 NCR 641			02/01/96	
14B	.0501 - .0503	10:07 NCR 430			05/01/96	
	.0505 - .0509	10:07 NCR 430			05/01/96	
14K	.0101 - .0103	10:07 NCR 430			05/01/96	
	.0201 - .0219	10:07 NCR 430			05/01/96	
	.0301 - .0310	10:07 NCR 430			05/01/96	
	.0312 - .0315	10:07 NCR 430			05/01/96	
	.0317 - .0324	10:07 NCR 430			05/01/96	
	.0326 - .0329	10:07 NCR 430			05/01/96	
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	.0350 - .0365	10:07 NCR 430			05/01/96	
	.0401 - .0408	10:07 NCR 430			05/01/96	
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	.0401 - .0407	10:07 NCR 430			05/01/96	
	.0601 - .0606	10:07 NCR 430			05/01/96	
	.0609	10:07 NCR 430			05/01/96	
	.0611 - .0615	10:07 NCR 430			05/01/96	
	.0701 - .0709	10:07 NCR 430			05/01/96	
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14M	.0101 - .0113	10:07 NCR 430			05/01/96	
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	.0604	10:07 NCR 430			05/01/96	
	.0606	10:07 NCR 430			05/01/96	
	.0608 - .0612	10:07 NCR 430			05/01/96	
	.0614 - .0615	10:07 NCR 430			05/01/96	
	.0617 - .0621	10:07 NCR 430			05/01/96	
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	.0701	10:07 NCR 430			05/01/96	
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	.0801 - .0811	10:07 NCR 430			05/01/96	
	.0901 - .0905	10:08 NCR 656			05/01/96	
14O	.0301 - .0314	10:07 NCR 430			05/01/96	
	.0401 - .0409	10:07 NCR 430			05/01/96	
	.0411 - .0416	10:07 NCR 430			05/01/96	
	.0501 - .0505	10:07 NCR 430			05/01/96	
	.0601 - .0609	10:07 NCR 430			05/01/96	
	.0611 - .0615	10:07 NCR 430			05/01/96	
	.0617 - .0618	10:07 NCR 430			05/01/96	
	.0701 - .0710	10:07 NCR 430			05/01/96	
14V	.0101 - .0104	10:07 NCR 430			05/01/96	
	.0201 - .0208	10:07 NCR 430			05/01/96	
	.0301 - .0304	10:07 NCR 430			05/01/96	
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.1101 - .1103	10:07 NCR 430	05/01/96				
.1201 - .1203	10:07 NCR 430	05/01/96				
.1301 - .1303	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1501 - .1504	10:07 NCR 430	05/01/96				
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.2201 - .2204	10:07 NCR 430	05/01/96				
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.2401 - .2404	10:07 NCR 430	05/01/96				
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.3201 - .3203	10:07 NCR 430	05/01/96				
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.3401 - .3403	10:07 NCR 430	05/01/96				
.3501 - .3503	10:07 NCR 430	05/01/96				
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.3701 - .3703	10:07 NCR 430	05/01/96				
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.3901 - .3903	10:07 NCR 430	05/01/96				
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.5001 - .5002	10:07 NCR 430	05/01/96				
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.5301 - .5303	10:07 NCR 430	05/01/96				
.5401 - .5403	10:07 NCR 430	05/01/96				
.5501 - .5503	10:07 NCR 430	05/01/96				
.5601 - .5603	10:07 NCR 430	05/01/96				
.5701 - .5703	10:07 NCR 430	05/01/96				
.5801 - .5804	10:07 NCR 430	05/01/96				
.5901 - .5903	10:07 NCR 430	05/01/96				
.6001 - .6003	10:07 NCR 430	05/01/96				
.6101 - .6103	10:07 NCR 430	05/01/96				
.6201 - .6202	10:07 NCR 430	05/01/96				
.6301 - .6303	10:07 NCR 430	05/01/96				
.6401 - .6403	10:07 NCR 430	05/01/96				
.6501 - .6503	10:07 NCR 430	05/01/96				
.6601 - .6603	10:07 NCR 430	05/01/96				
.6701 - .6702	10:07 NCR 430	05/01/96				
.6801 - .6802	10:07 NCR 430	05/01/96				
.6901 - .6903	10:07 NCR 430	05/01/96				
18A .0124 - .0128	10:07 NCR 430	05/01/96				
.0130	10:07 NCR 430	05/01/96				
.0132 - .0133	10:07 NCR 430	05/01/96				
.0135 - .0136	10:07 NCR 430	05/01/96				
18I .0114 - .0120	10:07 NCR 430	05/01/96				
18J .0110 - .0119	10:07 NCR 430	05/01/96				
.0212 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0311	10:07 NCR 430	05/01/96				
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.0701 - .0715	10:07 NCR 430	05/01/96				
.0801 - .0805	10:07 NCR 430	05/01/96				
.0803	10:02 NCR 118	07/01/95			07/01/95	
18K .0109 - .0116	10:07 NCR 430	05/01/96				
.0262 - .0263	10:08 NCR 656	05/01/96				
18L .0107 - .0108	10:07 NCR 430	05/01/96				
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	.0511	10:07 NCR 430				
	.0513	10:07 NCR 430				
	.0601 - .0607	10:08 NCR 656				
	.0701 - .0705	10:07 NCR 430				
	.0707	10:07 NCR 430				
	.0801	10:07 NCR 430				
	.0803 - .0809	10:07 NCR 430				
	.0901 - .0904	10:07 NCR 430				
	.1001 - .1006	10:07 NCR 430				
	.1101 - .1103	10:07 NCR 430				
	.1105 - .1107	10:07 NCR 430				
	.1201	10:07 NCR 430				
	.1203 - .1206	10:07 NCR 430				
	.1301 - .1309	10:07 NCR 430				
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	.0824 - .0838	10:07 NCR 430				
	.0901 - .0908	10:07 NCR 430				
	.1001 - .1009	10:07 NCR 430				
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	.1401 - .1403	10:07 NCR 430				
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	.0701 - .0709	10:08 NCR 656				
18O	.0517 - .0524	10:08 NCR 656				
18P	.0901 - .0903	10:07 NCR 430				
	.1001 - .1004	10:07 NCR 430				
18Q	.0284	10:07 NCR 430				
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26H	.0302	10:04 NCR 228	08/01/95	x	07/01/95	
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26H	.0213	10:02 NCR 118	07/01/95		07/01/95	
26I	.0101 - .0107	10:10 NCR 826	11/01/95			
39D	.0302 - .0303	10:09 NCR 722	11/01/95			
41F	.0706	10:03 NCR 196	08/01/95		08/01/95	
	.0812	10:03 NCR 196	08/01/95		08/01/95	
42H	.0911	10:09 NCR 722	12/01/95			
42W	.0001 - .0002	10:10 NCR 828	11/01/95			

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12 NCAC 04E .0104	10:07 NCR 573	10/01/95				
07D .0201	10:07 NCR 575	10/01/95				
.0301	10:07 NCR 575	10/01/95				
.0401	10:07 NCR 575	10/01/95				
.0701	10:07 NCR 575	10/01/95				
.0706	10:07 NCR 575	10/01/95				
.0801	10:07 NCR 575	10/01/95				
.0806	10:07 NCR 575	10/01/95				
.0902	10:07 NCR 575	10/01/95				
.0904	10:07 NCR 575	10/01/95				
09A .0204	10:02 NCR 122	08/01/95			08/01/95	
09B .0113	10:02 NCR 122	08/01/95			08/01/95	
.0201 - .0202	10:02 NCR 122	08/01/95			01/01/96	
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.0206	10:02 NCR 122	08/01/95			08/01/95	
.0210	10:02 NCR 122	08/01/95			08/01/95	
.0212 - .0214	10:02 NCR 122	08/01/95			08/01/95	
.0226 - .0228	10:02 NCR 122	08/01/95			08/01/95	
.0232 - .0233	10:02 NCR 122	08/01/95			08/01/95	
09C .0401	10:02 NCR 122	08/01/95			08/01/95	
.0601	10:02 NCR 122	08/01/95			08/01/95	
09D .0102	10:02 NCR 122	08/01/95			08/01/95	
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10B .0102 - .0103	10:09 NCR 723	01/01/96				
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.0801 - .0803	10:09 NCR 723	01/01/96				
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.1201 - .1205	10:09 NCR 723	01/01/96				
11 .0210	10:05 NCR 301	09/01/95				
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	10:01 NCR 12	01/01/96				Notice on Subject Matter
	10:02 NCR 149	10/01/95				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
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.0303 - .0315	10:02 NCR 142	08/01/95				
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	10:06 NCR 392					Rules Filed 05/95
	10:09 NCR 783					Rules Filed 06/95
	10:10 NCR 000					Rules Filed 07/95
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32F .0003	10:10 NCR 831	11/01/95				
32H .0102	10:02 NCR 151	07/01/96				
.0201	10:02 NCR 151	07/01/96				
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.0408	10:02 NCR 151	07/01/96				
.0506	10:02 NCR 151	07/01/96				
.0601	10:02 NCR 151	07/01/95				
.0602	10:02 NCR 151	07/01/96				
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21 NCAC 36 .0401 - .0405	10:10 NCR 839	12/01/95				
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21 NCAC 37 .0101	10:04 NCR 262	08/01/95			08/01/95	
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48G .0501 - .0516	10:08 NCR 671	10/01/95				
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.0701 - .0704	10:08 NCR 671	10/01/95				
PLUMBING, HEATING & FIRE SPRINKLER CONTRACTORS						
21 NCAC 50 .0402	10:01 NCR 39	09/01/95				
.0505	10:01 NCR 39	09/01/95				
PROFESSIONAL COUNSELORS						
21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
.0301	10:01 NCR 40	07/01/95			07/01/95	
.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
.0310	10:01 NCR 40	07/01/95				
.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
.0601 - .0604	10:01 NCR 40	07/01/95			07/01/95	
PUBLIC EDUCATION						
16 NCAC 06D .0106	10:07 NCR 584	11/01/95				



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**REAL ESTATE COMMISSION**

21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95			08/01/95	
.0503	10:04 NCR 263	08/01/95			08/01/95	
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95			08/01/95	
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	
.0515	10:02 NCR 157	07/01/95			07/01/95	

**REFRIGERATION EXAMINERS**

21 NCAC 60 .0102	10:04 NCR 264	08/01/95			08/01/95	
.0105	10:09 NCR 781	11/01/95				
.0204	10:04 NCR 264	08/01/95			08/01/95	
.0314	10:04 NCR 264	08/01/95			08/01/95	
.1102	10:04 NCR 264	08/01/95			08/01/95	
.1103	10:09 NCR 781	11/01/95				

**REVENUE**

Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
Tax Review Board	10:09 NCR 716					

**SECRETARY OF STATE**

18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				

**STATE PERSONNEL**

25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
.0205	10:04 NCR 264	08/01/95				
.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0509	10:07 NCR 588	10/01/95				
.0808	10:04 NCR 264	08/01/95				
.1001	10:04 NCR 264	08/01/95				
.1009	10:04 NCR 264	08/01/95				
.1201	10:04 NCR 264	08/01/95				
.1204	10:04 NCR 264	08/01/95				
.1401	10:04 NCR 264	08/01/95				
.1801 - .1802	10:04 NCR 264	08/01/95				
.2001	10:04 NCR 264	08/01/95			08/08/95	
01E .0804	10:04 NCR 264	08/01/95				
.1402 - .1409	10:07 NCR 588	10/01/95				
.1410 - .1411	10:07 NCR 588	10/01/95				
01J .0604 - .0606	10:07 NCR 588	10/01/95				
.0608	10:07 NCR 588	10/01/95				
.0610 - .0612	10:07 NCR 588	10/01/95				
.0613 - .0615	10:07 NCR 588	10/01/95				
01K .0312	10:04 NCR 264	08/01/95				

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**TRANSPORTATION**

19A NCAC 02D .0801	10:04 NCR 254	09/01/95				
04A .0004	10:10 NCR 829	12/01/95				

# BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
<b>Title 1 - Dept. of Administration - Full Title</b>	<b>201 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
<b>Title 2 - Dept. of Agriculture - Full Title</b>	<b>202 00 00</b>	<b>\$98.00</b>	<b>\$140.00</b>
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
<b>Title 3 - Dept. of State Auditor - Full Title</b>	<b>203 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 4 - Dept. of Commerce - Full Title</b>	<b>204 00 00</b>	<b>\$87.50</b>	<b>\$125.00</b>
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
<b>Title 5 - Dept. of Corrections - Full Title</b>	<b>205 00 00</b>	<b>\$56.00</b>	<b>\$80.00</b>
Division of Prisons	205 15 02	\$24.50	\$35.00
<b>Title 6 - Council of State - Full Title</b>	<b>206 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 7 - Dept. of Cultural Resources - Full Title</b>	<b>207 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 8 - State Board of Elections - Full Title</b>	<b>208 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 9 - Offices of the Governor &amp; Lt. Governor - Full Title</b>	<b>209 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 10 - Dept. of Human Resources - Full Title</b>	<b>210 00 00</b>	<b>\$346.50</b>	<b>\$495.00</b>
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
<b>Title 11 - Dept. of Insurance - Full Title</b>	<b>211 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
<b>Title 12 - Dept. of Justice - Full Title</b>	<b>212 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
<b>Title 13 - Dept. of Labor - Full Title</b>	<b>213 00 00</b>	<b>\$77.00</b>	<b>\$110.00</b>
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
<b>Title 14A - Dept. of Crime Control &amp; Public Safety - Full Title</b>	<b>214 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
<b>Title 15A - Dept. of Environ., Health, &amp; Nat. Resources - Full Title</b>	<b>215 00 00</b>	<b>\$276.50</b>	<b>\$395.00</b>
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$58.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00



DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$35.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyzer	215 25 31	\$17.50	\$25.00
<b>Title 16 - Dept. of Public Instruction - Full Title</b>	<b>216 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Elementary & Secondary Education	216 10 06	\$21.00	\$30.00
<b>Title 17 - Dept. of Revenue - Full Title</b>	<b>217 00 00</b>	<b>\$91.00</b>	<b>\$130.00</b>
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$58.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 29	\$21.00	\$30.00
<b>Title 18 - Secretary of State - Full Title</b>	<b>218 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
Securities Division	218 10 06	\$21.00	\$30.00
<b>Title 19A - Dept. of Transportation - Full Title</b>	<b>219 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
<b>Title 20 - Dept. of the State Treasurer - Full Title</b>	<b>220 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 21 - Occupational Licensing Boards - Full Title</b>	<b>221 00 00</b>	<b>\$143.50</b>	<b>\$205.00</b>
<b>Title 22 - Administrative Procedures Act - Repealed</b>	<b>222 00 00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Title 23 - Dept. of Community Colleges - Full Title</b>	<b>223 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 24 - Independent Agencies - Full Title</b>	<b>224 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 25 - Office of State Personnel - Full Title</b>	<b>225 00 00</b>	<b>\$42.00</b>	<b>\$60.00</b>
<b>Title 26 - Office of Administrative Hearings - Full Title</b>	<b>226 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
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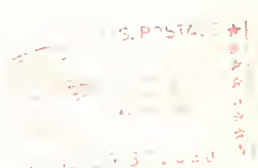
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